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NOMINATIONS OF OTHONIEL ARMENDARIZ AND KAY COLES JAMES

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

ON THE

NOMINATIONS OF OTHONIEL ARMENDARIZ TO BE A MEMBER OF THE FEDERAL LABOR RELATIONS AUTHORITY AND KAY COLES JAMES TO BE DIRECTOR OF THE OFFICE OF PERSONNEL MANAGEMENT

JUNE 21, 2001

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NOMINATIONS OF OTHONIEL ARMENDARIZ AND KAY COLES JAMES

THURSDAY, JUNE 21, 2001

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:30 p.m., in room SD–342, Dirksen Senate Office Building, Hon. Daniel K. Akaka presiding.

Members present: Senators Akaka, Cochran, and Voinovich.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. The Committee will please come to order. I want to thank our witnesses, their families and our guests for being with us today. It is so good to be here with Senator Cochran. This afternoon we are considering the nominations of Othoniel "Tony" Armendariz, to serve a 5-year term as a member of the Federal Labor Relations Authority, and Kay Coles James to serve a 4-year term as director of the Office of Personnel Management. Before we call up our witnesses, I would like to welcome our colleagues from Virginia, and in particular the Hon. George Allen, who will introduce Ms. James. I would also like to insert into the record a letter from Representative Tom Davis of Virginia in support of Ms. James. Senator Allen, good to have you here before the Committee.

Senator ALLEN. Aloha.

Senator AKAKA. Aloha.

TESTIMONY OF HON. GEORGE ALLEN, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator ALLEN. Thank you. Thank you, Mr. Chairman and Senator Cochran. It is a pleasure to be before this Committee, but it is a real privilege and pleasure for me to be introducing Kay Coles James for your consideration, and an outstanding nomination by President Bush to have her as director of the Office of Personnel Management.

Kay has been a very personal friend, and later an ally for many years, and she is a person I have the highest respect and admiration for, not just as a friend, but as an ally, a mentor and an adviser. She will once in awhile E-mail me or send me information over the years, when you get into some contentious issues. I will keep her words of wisdom in my speech file or in my briefcase to refer to them, to make sure I keep a proper perspective. It is great to see Kay here, her husband, Charles Senior, Charles Junior, called Chuck—Chuck is her son—and her daughter, Lizzy and her

husband are here—it is good to see so many of the family. They have one other child, Robert, who is here, too. So we have the whole James crew with us.

You could look at Ms. James' resume and her record of achievement, which is really a motivational one for anyone, if you look at her life and how she started off and how she has excelled throughout life, and she is a personal example of someone with hard work, with guile, with wit and wisdom, has worked in so many different areas, and wherever she has worked, whatever effort she has contributed her talents to, has been all the better for it.

As former governor, I was very fortunate to have Kay James as our Secretary of Health and Human Services. Starting off in January, 1994 we brought together a lot of people and a lot of very different agencies, working on a variety of initiatives. As Secretary, Kay Coles James was responsible for 14 diverse State agencies, having 19,000 employees, with a combined biennial budget of about $8.5 billion, and there are a variety of agencies in there dealing with health, welfare, obviously social services.

One of the more difficult things we did, but very successful, was welfare reform, the Empowerment Commission; and what we were able to do was put forward a very comprehensive, pro-family, pro-work welfare reform. The welfare rolls have been reduced by well over 50 percent. The taxpayers have saved hundreds of millions of dollars, but best of all it is very pro-family. Families are not being busted up, and best of all, tens of thousands of Virginians are now leading independent, self-reliant lives. That is the policy.

Getting the bill passed was no easy task, but nevertheless what Kay did as Secretary of Health and Human Services in this regard was make sure that all the folks in social services who were on the front lines, implementing these laws that get passed and advocated, had a right attitude, a proper spirit, make them an employment agency. They had stickers that said, "Yes, we can." That is a good, positive attitude. That is the sort of motivation you would want for a director of personnel management, and seeking out to find the best people to work for the Federal Government and its services to the people, understanding their commitment to consumer service. But what Kay can do is motivate folks, attract the best talent, and have them provide those services, the Federal Government services, in the best way possible to the people of America or internationally, that are served by the Federal Government.

I think that welfare reform implementation is a prime example of her capabilities, as well as the child support enforcement. Too many people are on welfare because, generally speaking—those fathers are not being responsible. Under Kay's creative leadership, child-support enforcement was vastly increased, working with DMV, working with the Department of Game and Inland Fisheries. Suspending driver's licenses or hunting and fishing licenses would really get a lot of folks' attention to pay child support enforcement, and with reciprocity with other States, even when they would flee to some other State, we would still track them down and get that money for their children.

So that is the kind of creative leadership that one would want as director of the Office of Personnel Management. She has worked in many other areas at the local, State and Federal level. She was

also in academia, as dean of the Graduate School of Government at Regent University. She is an author of several books, the most famous, I think, of which is her first, "Never Forget," which is never forget where you came from. She has served in the White House previously, as associate director of the White House Office on National Drug Control Policy in the first Bush Administration. She also was assistant secretary at the U.S. Department of Health and Human Services, also in the first Bush Administration.

In the private sector, again exemplary service. She was executive vice president and chief operating officer with The One-to–One Partnership, which is an umbrella organization for mentoring programs. She was the director of public affairs for National Right to Life Committee, personnel director for Circuit City Stores, director of community education and development for Housing Opportunities Made Equal, or HOME, in Richmond, Virginia; and she also has worked in a variety of areas, as a commissioner on the National Commission for Children.

She served on the Fairfax County School Board. That is where she was when we were able to get her to be Secretary of Health and Human Resources; and, in fact, when she went off into academia, I still said, "We need you, Kay, in Virginia." The most important thing for the future of our children in Virginia and our country is education, and Kay served on the Virginia State Board of Education, advancing and advocating high academic standards for all students, as well as accountability for students and teachers and schools.

She also serves on the boards for the Fellowship of Christian Athletes and Young Life. She currently serves on the board of directors for a variety of organizations, Focus on the Family, The Virginia Children's Education Foundation, and the Center for Jewish and Christian Values. I am very confident, Mr. Chairman and Members of the Committee, that Kay Coles James, as director of the Office of Personnel Management, will help guarantee that the agencies have the personnel, the qualified, capable and motivated personnel necessary to meet the needs and the expectations.

In fact, if they have Kay's spirit, they will exceed the expectations that people have for government agencies. So it is my sincere pleasure to introduce this exceptional woman. In fact, she is a tremendous Renaissance woman. She really is. You will find her to be articular, smart, inspirational, cheerful, experienced, knowledgeable leader, with exceptional character and integrity, and I proudly present Kay Coles James to you as a nominee this afternoon, and obviously wholeheartedly recommend her confirmation.

Thank you, Mr. Chairman and Senator Cochran.

Senator AKAKA. Thank you very much, Senator Allen. Thank you for your gracious and personal remarks. As a matter of fact, she sounds so great we want to hire her.

Senator ALLEN. Well, that was my feeling, as well, Mr. Chairman.

Senator AKAKA. Well, I thank you very much for your comments. Do you have any comments, Senator Cochran?

OPENING STATEMENT OF SENATOR COCHRAN

Senator COCHRAN. Mr. Chairman, I am moved to applaud and cheer—a great statement, and it is very exciting to know that we have someone of the talent, experience and qualities of Ms. James to come serve in this government. Thank you very much for being here to introduce her.

Senator ALLEN. My pleasure.

Senator AKAKA. Thank you very much, Senator Allen.

The rules of the Committee on Governmental Affairs require that an inquiry be conducted into the experience, qualifications, suitability and integrity of the nominee to serve in the position to which he or she has been nominated. The Committee has received all of the required information. In addition, the nominees have provided written responses to pre-hearing questions submitted to the Committee concerning issues relevant to the position for which they have been nominated.

Committee staff reviewed all of the information. In addition, staff have examined the financial disclosures submitted by the Office of Government Ethics. Copies of the nominees' biographical information and pre-hearing responses will be placed in the record as part of this hearing and are available upon request.

Their financial statements are available for inspection by the public in the Committee office, and Senator Cochran and I have reviewed the FBI background investigation reports.

The Committee requires that all nominees be under oath while testifying on matters relating to their suitability for office, including the policies and programs which the nominee will pursue, if confirmed. Our first witness will be Mr. Armendariz. Will you please come to the witness table and remain standing? Please raise your right hand. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. ARMENDARIZ. I do.

Senator AKAKA. Thank you very much. You may be seated. At this time, I would like to ask Senator Cochran whether he has any opening comments?

Senator COCHRAN. Mr. Chairman, I have no opening statement. We welcome the witnesses and we appreciate the attendance of so many today at this confirmation hearing. I appreciate the fact that we are having the hearing, even though we have not passed formally the organizational reorganization measure that is being discussed between the two leaders. But we think it is important to go forward with these nominations to fill these important positions in the Executive Branch of our government, and we thank you, Mr. Chairman, for convening the hearing in a timely way.

Senator AKAKA. Thank you very much.

Senator Voinovich.

OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. First of all, it is a pleasure to welcome both of our nominees, and I am pleased, Mr. Chairman, that this Committee is considering these nominations.

I would like to say to both of the nominees that I appreciate that you are interested in public service. We need good people. Mr. Chairman, I consider the Office of Personnel Management to be an

extremely important office within the Federal Government. According to its vision, OPM exists to help agencies get the right people in the right jobs with the right skills at the right time, so they can produce results for the American people.

With a mission that has so much impact on the manner in which the Federal Government operates, I do not think we can overemphasize the significance of finding the best possible leadership to run OPM. I believe that the President has nominated someone who can get the job done. Ms. James brings over 20 years of public policy experience, including service as Virginia's Secretary of Health and Human Services, a position in which she had responsibility for 14 State agencies and 19,000 employees, with a combined biennial budget of $8.4 billion.

Mr. Chairman, as you know, since coming to the Senate I have put a great deal of emphasis on the Federal Government's management challenges. First and foremost among these shortcomings is the issue of building and maintaining a quality public workforce, and we are in trouble today. We have had testimony after testimony that says this Nation is in intensive care when it comes to the Federal workforce.

A great deal of responsibility is going to rest with OPM. The challenges there are going to be more important and more significant than perhaps maybe any time in our country's history, and I am not going to go into all of the details, because, Ms. James, you know what they are. The OPM director and the deputy director for management at the Office of Management and Budget will have to work together closely to forge the administration's policy on strategic human capital management, and I just want to emphasize how important it is. That is why we really need, Mr. Chairman, to confirm Ms. James. We need a national initiative in this area, and OPM can really make a difference.

I would also like to extend my regards to Othoniel "Tony" Armendariz. I am confident that as a former member of the Federal Labor Relations Authority, you are fully qualified to serve in that capacity again. In addition, I would like to say how pleased I am that you have chosen to avail this Nation of your talents once again. It is that spirit of devotion that we hope all Americans would emulate.

So, Mr. Chairman, I am glad to be here today to hear from our two nominees, and hopefully we can move them along quickly. Thank you.

[The prepared statement of Senator Voinovich follows:]

PREPARED STATEMENT OF SENATOR VOINOVICH

Thank you, Mr. Chairman.

It is a pleasure to welcome Mr. Othoniel Armendariz, President Bush's nominee to the Federal Labor Relations Authority, and Ms. Kay Coles James, the President's nominee to be Director of the Office of Personnel Management to the Committee this afternoon. I am pleased that the Committee is considering their nominations.

Mr. Chairman, I consider OPM to be an extremely important office within the Federal Government. According to its vision statement, OPM exists "to help agencies get the right people in the right jobs with the right skills at the right time so they can produce results for the American people." With a mission that has so much potential impact on the manner in which the Federal Government operates, I don't think we can over-emphasize the significance of finding the best possible leadership

to run OPM. Fortunately, President Bush has nominated an individual who has the experience and knowledge to be a top-notch OPM Director.

Ms. James brings over 20 years of public policy experience, including service as Virginia's Secretary of Health and Human Resources, a position in which she had responsibility for 14 State agencies and 19,000 employees with a combined biennial budget of $8.4 billion. She has also served on a wide variety of commissions, task forces and policy councils, convened by the congressional leadership and former presidents of the United States. I am pleased that she has chosen to answer our Nation's call once again, agreeing to take this important position in the Administration.

Mr. Chairman, as you know, since coming to the Senate, I have put a great deal of emphasis on the Federal Government's management challenges. First and foremost among these shortcomings is the issue of building and maintaining a quality public workforce. A great deal of responsibility for addressing the government's human capital crisis will rest upon the shoulders of the next OPM Director.

With the average age of the Federal employee at 47 years old and rising, the imminent retirement of hundreds of thousands of experienced employees by the end of this decade and inadequate workforce planning processes at many agencies, the Federal Government is in desperate need of a comprehensive strategy to address these challenges. Having focused my attention on this issue in the Government Oversight Subcommittee for the past 2½ years, and for a great deal longer in my previous capacities as Mayor of Cleveland and Governor of Ohio, I believe that there are few more important issues for Congress, the Administration and the various Federal agencies to address than the management of the Federal workforce. All governmental functions, from conducting research at health centers and ensuring safe drinking water to operating safe airports and protecting our national security, must be supported by a competent corps of public employees.

The OPM Director and the Deputy Director for Management at the Office of Management and Budget should work closely together to forge the Administration's policy on strategic human capital management. Once these two positions have been officially filled, I believe it would be appropriate for the Committee, Mr. Chairman, to hold a hearing to examine the Administration's plans for addressing the government's human capital crisis.

Ms. James, I was pleased that we had the chance to meet last month and to receive your commitment to work with me on this issue. As I expressed to you then, I am committed to working with the Administration to improve the Federal Government's management of its people. While we are faced with a challenging set of problems, I am confident that, working together, we can formulate lasting solutions.

I would also like to extend my warm regards to Mr. Othoniel "Tony" Armendariz. I am confident that, as a former Member of the Federal Labor Relations Authority, Mr. Armendariz is fully qualified to serve in this capacity once again. In addition, I would like to say how pleased I am that Mr. Armendariz has chosen to avail this nation of his talents once again. It is that spirit of devotion to serve one's fellow man that we should hope all Americans will emulate.

Mr. Chairman, as you know, I did a great deal of work as Governor of Ohio to advance labor-management partnerships in Ohio's State agencies. I look forward to asking Mr. Armendariz some questions about relations between these two groups within the Federal Government.

Thank you, Mr. Chairman.

Senator AKAKA. I agree with you. We ought to move them along quickly. Thank you very much for your statement. And now I would like to call on our Senator from Virginia, Senator John Warner, for his statement.

TESTIMONY OF HON. JOHN WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. I thank you, Mr. Chairman, Members of the Committee. I apologize for being late. I was elsewhere testifying. I really wanted to be here for many reasons. Of course, I highly support the nominee, but throughout my 23 years in the Senate—and I came to the Senate with the distinguished gentleman on your right, Mr. Cochran, who also came here 23 years ago—I have worked hard on behalf of those in Federal Civil Service and Government employees. Why? Because, one, we have a very significant

group who reside in the Commonwealth of Virginia, work in the Commonwealth of Virginia, and you are also looking at an individual that held many different positions in the Federal Government before I came to the U.S. Senate. They range from a firefighter in the forests of the Great West, as an employee of the Forest Service, to a letter carrier during part of World War II, to Secretary of the Navy, where I had a department of over one million in uniform and about 700,000 civilians at that time.

So I have had extensive experience and I owe a great debt of gratitude to the civil servants who, through that progression of jobs, helped to train me and take care of me; and, therefore, I am going to be ever watchful as I observe the performance of the duties by Ms. James, and I am confident that she will do well. We here in the Congress have been working on legislation to address many significant and timely issues affecting the Federal workforce and OPM's role in finding solutions to these problems is very critical.

I meet regularly with representatives of the various employee groups. It is estimated that over the next several years, over half the Federal workforce will be eligible for retirement. Senator Cochran and I are not included in that group. Recruitment and retention of a skilled, qualified Federal workforce is crucial, and I do not say that lightly, Mr. Chairman. I say that with great sincerity. Pay, affordable health care coverage and continued improvements to the Federal Employees Retirement System are just some of the issues Congress has been working on in consultation with OPM and related organizations.

I believe that with her previous experience in government, on the local, the State and Federal levels, and her impressive accomplishments in the private sector, Kay Coles James will be able to handle these challenges that lay before her as we reshape the Federal workforce. I will sleep with one eye open, watching, as she discharges these duties, because I have an obligation to pay back to the current group in Federal service all the benefits that I received through these many years.

I thank the Chairman and I thank the Members for their indulgence, and I shall wish you very much the best of luck.

Senator AKAKA. Thank you very much, Senator Warner. We really appreciate your statement.

Senator COCHRAN. Mr. Chairman, may I join you in thanking Senator Warner for taking time to come by and share with the Committee his impressions and knowledge of our nominee, Ms. James, and his personal experiences. He has been a leader in every way in this subject area of legislation and policies that are pending before the Congress, and we are thankful to him for that leadership. Thank you, Senator.

Senator AKAKA. Thank you very much. The FLRA was established in 1978 under the Civil Service Reform Act. It offers guidance, resolves disputes and ensures compliance with regulations concerning Federal labor-management relations. Its mission, under the Federal Service Labor–Management Relations Statute, is to promote stable, constructive labor relations that contribute to a more effective government.

Mr. Armendariz previously served as a member of the FLRA, from December 1989 to March 1997, and worked on over 2,000 decisions. Mr. Armendariz, I would like to thank you for being with us this afternoon and to congratulate you on your nomination. At this time I would like to ask you to introduce your family to us and to the audience, please.

Mr. ARMENDARIZ. Thank you, Mr. Chairman, and yes, I have my wife, Blanche Armendariz, here. She is sitting right behind me, in the green dress.

Senator AKAKA. Welcome to the Committee.

Mr. ARMENDARIZ. I also want to thank the chairman of the FLRA for being here, Ms. Cabiness, another member of the FLRA, Carol Pope, and some members of the FLRA staff that have come to this hearing.

Senator AKAKA. Well, that is great that you have support.

Mr. ARMENDARIZ. If I may, Mr. Chairman, I would like to give a little statement.

Senator AKAKA. Mr. Armendariz, before you do that, the Committee has three questions we ask of all of the nominees for the record, that I would like to ask you.

Mr. ARMENDARIZ. Yes, sir.

Senator AKAKA. Is there anything you are aware of in your background which might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. ARMENDARIZ. Absolutely not.

Senator AKAKA. Do you have any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. ARMENDARIZ. No, sir, I do not have any.

Senator AKAKA. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly-constituted committee of Congress, if you are confirmed?

Mr. ARMENDARIZ. Yes, sir, I do.

Senator AKAKA. Well, thank you very much. After serving on FLRA for such a long period of time, there is no doubt that you have the expertise to fill this position, and I have only a couple of questions. What new issues and attitudes do you see developing because of outsourcing and privatization of government services?

Mr. ARMENDARIZ. Privatization and outsourcing is a trend that has taken place lately, and, of course, it creates new issues because there is, in part of the force of—Federal employee force, will no longer be in the same level, insofar as the labor-management relations that exist or have existed traditionally. So, as time goes by, there will be issues that we do not know yet what they may be that will arise, insofar as the effects it may have, vis-a-vis one and the other, part of the workforce. But we will be watching and analyzing, and looking into whether the effects, if any, can be overcome and corrected.

So I will be part of that group that will be looking into that, if confirmed.

Senator AKAKA. Before we go any further, will you give us your statement? I have other questions to ask.

TESTIMONY OF OTHONIEL ARMENDARIZ[1] TO BE A MEMBER OF THE FEDERAL LABOR RELATIONS AUTHORITY

Mr. ARMENDARIZ. I want to state that I am honored and proud to have been nominated by President George W. Bush as a member of Federal Labor Relations Authority, and also that, from December 1989 through March 1997, I had the distinct privilege of serving as a member of the FLRA. After having been nominated twice and confirmed by the Senate twice before. I fully understand, because of my previous service, and I appreciate the important role that members have in establishing policies and guidance, relating to the matters under the Federal service labor-management relations statute.

The role of the FLRA is to contribute to a successful Federal labor-management relations program, particularly important as the Federal workforce evolves and addresses new challenges and opportunities that lie ahead. Through the responsibilities entrusted to the FLRA by Congress, the FLRA has a unique opportunity to contribute to this public interest that Congress has, to develop and implement modern, progressive work practices, to facilitate and to improve employee performance, and contribute to an efficient accomplishment of the operations of the government.

I will hope to be one of those that would put his part together with the other members, to bring, as was said, the Federal workforce out of intensive care, and I hope that it will be well before too long. I look forward to the confirmation process, and pledge that, if confirmed, I will take seriously the responsibilities of the position of member of the agency. I will discharge these responsibilities to the best of my ability.

If I may, I would also like to state that I congratulate and I am very pleased to have attended a pre-hearing conference with the staff of the Members of this Committee, who conducted such conference in a very professional and courteous manner, and I thank them. Thank you very much.

Senator AKAKA. Thank you very much for your statement. I have asked you my question and I will yield to Senator Cochran for any questions.

Senator COCHRAN. Mr. Chairman, thank you very much. I am glad to be here today to congratulate our nominee, Mr. Armendariz. We appreciate your willingness to serve again on the Federal Labor Relations Authority. Obviously, President Bush thought you did an excellent job before or he would not have asked you to serve again. I think that is a very high compliment.

Mr. ARMENDARIZ. Thank you. I am very proud.

Senator COCHRAN. We hear a lot about the challenges that face the Federal workforce; one is stability; attracting well-qualified employees to serve in the government, and then having a working relationship between the employees and the supervisors and the authorities. What, if anything, would you recommend as suggestions about how we could improve the stability of the workforce and the

[1] The prepared statement of Mr. Armendariz appears in the Appendix on page 25. Biographical and financial information appears in the Appendix on page 27. Pre-hearing questions and responses appear in the Appendix on page 35.

outlook for maintaining good labor relations in the Federal Government?

Mr. ARMENDARIZ. Senator, it is a fact that the Federal Government has almost 3 million Federal employees, and that is a huge investment in human capital, especially at a time when a good number of good employees are approaching the age of retirement, after having obtained the skills necessary in the specialties that they are in. It is very important to maintain a number of avenues where we can continue recruiting and maintaining those skilled people. Motivation is one of the main things to continue to have this wealth of knowledge, provided to the people through the Federal Government.

But there are other ways that we have to look into and test, possibly, to make sure that private industry, especially, will not take them away from us, but they will continue serving until they retire. It is an investment that we have that we cannot just overlook, because they have such knowledge that they can provide the newcomers to become as good or better than they have been.

So I will work with the other members of the agency, to look for specific issues in this area, and look for other alternatives that will address this challenge that we face.

Senator COCHRAN. Thank you very much.

Thank you, Mr. Chairman.

Senator AKAKA. Thank you, Senator Cochran.

Senator Voinovich.

Senator VOINOVICH. Mr. Chairman, we have had eight hearings during the last couple of years dealing with the Federal workforce, and some of the things that are being done and a lot of things that are not being done. President Clinton issued an executive order that established labor-management partnerships in Federal agencies. President Bush rescinded that order, but I know there is some consideration being given to another approach. Are you familiar with that executive order?

Mr. ARMENDARIZ. I am somewhat familiar, not as much as I should be or will be, but my feeling is that the labor-management relations that should exist will work better when the parties choose the way to approach it, and it could be in the form of a partnership, or it could be in any other form. I think that the way it should be entered into and approached should not be mandatory as to one way only. We have learned that, many times, one size does not fit all.

So it is possible that the reason why President Bush rescinded that executive order and issued the other order was to allow the parties themselves to choose what kind of relationship they should have, and we should encourage that, I think, because it would be better to enter into a relationship where both parties feel at ease and comfortable, than to have one particular relationship because it has been mandatory to have it.

Senator VOINOVICH. Well, I think the purpose of the labor-management executive order was to bring people together so that labor and management would sit down and talk to each other; and as a former governor who was very much into quality management, I can tell you that if, as the executive, you do not create an environ-

ment where people get together and talk to each other, quite frankly, sir, it does not happen.

Mr. ARMENDARIZ. That is correct.

Senator VOINOVICH. So I would hope that, if you get this job, that you would talk about creating some kind of opportunity for labor and management to come together and talk to each other. I think that is extremely important, because I can tell you that the labor-management relationships right now in the Federal Government are not what they ought to be. Second of all, it is one of the reasons that has contributed to people who are ready to retire, to retire, and others that are thinking about early retirement, think about leaving the Federal Government at a time when we need their expertise and their institutional knowledge.

The other question I want to ask, and I do not know whether my colleagues know this or not, but of the Senior Executive Service, 60 percent of them get the same pay, and we have people who are leaving Federal service because their cost of living increase is more when they leave for their pension than it is for them to remain in the Federal service. Are you familiar with that, and if you are, what is your comment about it?

Mr. ARMENDARIZ. Well, I am not really familiar with it, Senator, but I realize that that may be one of the reasons why a lot of people are leaving us, too, and it is something to be looked into, and it is a very important issue, and I can tell you that I will bring it up to the other members so we can come up with some additional ways to see if we can salvage those people. It is true that sometimes they go to private industry because private industry pays more, and they need more; and I feel, though, that in their hearts, they want to stay, the majority, if they can.

Senator VOINOVICH. Thank you.

Senator AKAKA. Thank you very much for your questions. Are there any further questions? The record will remain open for any further questions and any statements from our colleagues. Mr. Armendariz, thank you again.

Mr. ARMENDARIZ. Thank you, Mr. Chairman.

Senator AKAKA. Thank you for being here this afternoon, for your cooperation with this process, and for accepting this nomination to public service. We really appreciate what you have said and wish you well.

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

Senator AKAKA. Thank you again for coming. You may be excused.

Mr. ARMENDARIZ. Thank you.

Senator AKAKA. Ms. James, we now invite you to come to the witness table, and we will proceed with a hearing on your nomination. I ask that you remain standing and raise your right hand. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. JAMES. I do.

Senator AKAKA. Thank you very much. Ms. James, I would like to welcome you to the Committee. You and I had a chance to talk informally earlier this month, and I congratulate you on your nomination. If confirmed, you will be taking the helm of the Federal Government's Office of Personnel Management at a most chal-

lenging time. The Office of Personnel Management is the central management agency of the Federal Government, and OPM administers and enforces Federal Civil Service laws, regulations and rules, and aids the Executive Branch in managing the Federal workforce.

It supports the Federal Government in recruiting, retaining, training and motivating the best and most effective workforce possible. Are there any statements you would like to make, Senator Cochran?

Senator COCHRAN. Mr. Chairman, thank you. I have wanted to publicly commend Ms. James for her agreeing to serve, and also to let her know that the members of Congress from northern Virginia have written letters, which they have asked to be made a part of the record, in support of your nomination. Congressman Frank Wolf, who represents the 10th District of Virginia, and Congressman Tom Davis, who represents the 11th District, both of them in their letters are very generous in their praise of you and of your qualifications for service in this important position. Mr. Chairman, I ask that these letters be made a part of the hearing record.[1]

Senator AKAKA. Without objection, it will be made part of the record.

Senator COCHRAN. Thank you.

Senator AKAKA. Senator Voinovich.

Senator VOINOVICH. Mr. Chairman, I have already made my welcoming remarks, and I am very happy that you are here, Ms. James, and look forward to your service in the Federal Government in an area that I think is the highest priority. Thank you, Mr. Chairman.

Senator AKAKA. Thank you very much. We are happy to have you here. I know you have family here, and I am going to give you the opportunity to introduce them to us.

Ms. JAMES. Thank you, Mr. Chairman. I do have family here today. I have many family and friends in the area, and I am afraid they are the ones that are taking up all the seats in the room today. I would like to introduce my husband, Charles, my sons, Chuck and Robert, and my daughter, Elizabeth. This is your big moment.

Senator AKAKA. You are all welcome.

Ms. JAMES. I have three godchildren here today, young girls that I thought it was very important for them to be here and to witness these proceedings, my goddaughter, Katherine Littel, as well as Grace James and Demi Arnold, and I am delighted to have them here with me today. Before I begin, Mr. Chairman, I want to acknowledge the fact that this process is grueling and sometimes anxiety-laden, but thanks to your staff and the staff of Senators Lieberman and Thompson, I just want to thank all of you for getting me as a nominee through this process, and through your helpfulness, have made it less anxious, and I do appreciate it. Your staff have been absolutely stellar, and I want to thank them.

I am deeply grateful—should I go on with my statement, Mr. Chairman?

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[1] The letters from Mr. Wolf and Mr. Davis appear in the Appendix on pages 23 and 24.

Senator AKAKA. May I ask you the questions required of all nominee's before you do?

Ms. JAMES. Certainly.

Senator AKAKA. Is there anything you are aware of in your background which might present a conflict of interest with the duties of the office to which you have been nominated?

Ms. JAMES. No.

Senator AKAKA. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibility of the office to which you have been nominated?

Ms. JAMES. No.

Senator AKAKA. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly-constituted Committee of Congress, if you are confirmed?

Ms. JAMES. Yes, I do.

Senator AKAKA. Thank you very much. You may proceed.

TESTIMONY OF KAY COLES JAMES [1] TO BE DIRECTOR OF THE OFFICE OF PERSONNEL MANAGEMENT

Ms. JAMES. I am deeply grateful to President Bush for nominating me to this position. I think it is one of the best jobs in Washington at one of the best times, because of the issues before the agency. It is not entirely coincidental that it was human resources management that first brought me to Washington nearly 20 years ago, and it is that same subject that brings me back today.

Whether it is in the corporate world or in the public sector, I firmly believe that the quality of an organization's employees is the singlemost important factor in determining its success and effectiveness. So questions of recruitment, retention, and fair treatment of Federal employees are as integral to our Nation as any national security or economic discussion. The opportunity to address and positively impact these issues at a very exciting time is why I am so grateful and so enthusiastic to be considered for this position.

One of the most important lessons that I have learned throughout my career corrects the misperception that some people have about government service. The vast majority of career employees are true public servants—talented individuals who have consciously chosen to use their work and skills on behalf of the Nation, often at financial or other sacrifices to themselves and to their families. If confirmed, I will have the privilege of assuming a position once held by Theodore Roosevelt.

I think the simplest explanation of OPM's mission can be found in the first annual message he sent to Congress as President, where he stated, "The National Government should demand the highest quality of service from its employees, and in return it should be a good employer." Demanding the highest quality of service requires several things: Aggressively recruiting the best and brightest in the Nation; continuing efforts to expedite and stream-

[1] The prepared statement of Ms. James appears in the Appendix on page 43.
Biographical and financial information appears in the Appendix on page 50.
Pre-hearing questions and responses appear in the Appendix on page 61.
Post-hearing questions and responses appear in the Appendix on page 90.

line the hiring process; and encouraging an attitude that recognizes that people are the owners of government and that we owe them courteousness, promptness and thoroughness in our dealings with them. Finally, it means developing and adhering to a true system of merit for the purpose of retention and promotion.

The second part of Roosevelt's message speaks even more clearly of OPM's mission: "To ensure that the Federal Government is a good employer." I know that President Bush and the Members of this Committee want even more of the Federal Government. It should be among the best employers in the world. The depth of this commitment is the measure of how we earn the loyalty and the respect of our Federal workforce. We do this by respecting the promises made to retired Federal employees, protecting their benefits, honoring their service, and responding to their needs with as little red tape as possible.

To our current employees, we must protect the security, quality and cost of their choices in health-care, life insurance and other benefits. We must continue to provide benefits that meet the needs of our day, like long-term care insurance and flexibility in making retirement decisions. We can also set a tone and an example of inclusiveness, fairness and openness to new ideas. The notion that labor and management must oppose, outsmart, defeat or ignore each other has no place in the modern workforce.

It is my hope and experience that everyone comes to the table with the same goal: To help make the government, not only more productive and effective, but also the best possible employer it might be. Though I am only beginning to develop goals for my tenure at OPM, if confirmed by the Senate, I am committed to meeting with the various stakeholders and staff and hearing their concerns before developing these further. One commitment I can make now is that I will be dedicated to restoring the image long associated with public service, namely that it is a noble and rewarding profession.

I am grateful for the suggestions, support, encouragement that I have already received from union and management officials, researchers, former OPM directors and members of Congress. The staff at OPM has already impressed me as some of the finest professionals within the government, and I am particularly appreciative of the excellent job Steve Cohen has done as acting director. I look forward to getting to know more of these employees in the months to come.

Thank you for this opportunity, and I would be pleased to answer any questions that you might have. Mr. Chairman, I had a slightly longer statement, and I would ask that that statement be entered into the record.

Senator AKAKA. Thank you very much, Ms. James. Your full statement will be included in the record. The Committee has some questions to ask, and let me begin. My colleagues today have touched on the challenges facing this administration and Congress in addressing the government-wide human capital crisis. I have been pleased to work with them and look forward to a continued partnership. We are examining a wide range of management issues within the context of hearings and GAO reviews. I plan to hold hearings on Federal pay and compensation to see how these issues

impact the government's ability to recruit and retain the right mix of employees.

One of my concerns is how will we attract young people to enter the Federal workforce when agencies are being asked to open up an additional 425,000 Federal Government jobs to private contractors.

Yesterday's "Federal Diary" in the *Washington Post* noted that a survey of Federal employees by the MSPB found that only 52 percent of those responding would recommend the government as a place to work. This number was down from 57 percent in 1996. I feel both numbers are unacceptable. Employees are caught between downsizing and outsourcing of government services. Agencies are forced to work with flattened budgets. I wonder how many young, qualified people who once viewed Federal employment as a means of serving the public are now choosing to go elsewhere.

I think the uncertainty and instability of Federal Government jobs and the lack of competitive pay are contributing factors. My question is what do you intend to do to ease the fears of current and prospective Federal employees to show that the government can compete with the private and public sectors to retain and recruit highly-qualified individuals to serve the American taxpayers?

Ms. JAMES. Thank you, Mr. Chairman. First of all, I agree with you. One of the things that makes this job so challenging and exciting is that it is a particular point in our history where we have to do and, I think, can do several things. First, I believe that it is absolutely essential that we raise the image of the public servant, and I think, when you are trying to attract someone, whether they are right out of college, whether they are coming out of graduate school, whether they are a midcareer person who is considering a career change—I want at the top of their list a consideration for coming in and serving in some area of the Federal Government, and using their expertise to serve their Nation.

I think another thing that we can do is to make sure that we show aggressive leadership in looking at some options for our agency directors and their heads, so that they can use the flexibilities that they already have to attract new people coming in. I think we have to be aggressive in our recruiting to make sure that we get the best and brightest, and that it is purely merit-based, so that we can attract those kinds of individuals to come in to Federal service.

I do believe that it is important for OPM in its function as a consultant to all Federal agencies, to help them think creatively and innovatively about how they can do that. I think that there are some very simple things that we can do and I am aware that the agency is already considering and has done, in terms of our advertising, in terms of our affirmatively going out and marketing and recruiting individuals to come into Federal service.

I also think it is important to realize that while privatizing or considering privatizing or contracting services, that that necessarily does not need to mean that we are going to lose the best and the brightest. If we create the kind of workforce that I know you and other Members of this Committee envision, I think the Federal workforce is going to be one of the most exciting places to

be, and we will not have any problem attracting people to want to come work for their government.

Senator AKAKA. Well, I am so pleased to hear that you believe OPM has an opportunity to be a model of what affirmative recruitment and access can mean in the workplace. Would you share with us in more detail what you mean by that?

Ms. JAMES. Well, certainly. I think one of the hallmarks of Federal service, the Civil Service, is that it is merit-based and that nothing else should come into play when being considered for either hiring or promotion—it should be purely based on their ability to do the job, not based on race, sex, sexual orientation or anything other than their ability to get the job done. When we are going out to attract the best and the brightest to come in and serve our country, I think that is what we ought to be looking for: Highly-skilled, highly-motivated, and highly-qualified people.

By setting the right tone, I believe, in the Federal Government, we can attract those kinds of people, and I think OPM can model what that looks like.

Senator AKAKA. Let's talk a moment about how the government can best compete with the private sector for skilled employees. We know that, for 17 of the past 20 years, military and civilian pay increases have been identical. The fiscal year 2002 budget resolution includes a sense of the Congress that rates of compensation for civilian employees should be adjusted at the same time and in the same proportion as the rates of compensation for members of the uniformed services.

Do you support pay parity for civilian and military employees, and how would you address the competitive pay gap that exists in the Federal Government?

Ms. JAMES. First of all, I support the President's budget, and in that budget, he has recommended certain pay increases for both the military and for the civilian workforce. I trust the military to advocate on behalf of the people who serve our Nation there, and I know that my job will be to advocate on behalf of the civil servants of this Nation, to make sure that our salaries are competitive, and I am not sure in every case that they are, and I look forward to looking into this more once on the job and understanding the rationale behind the decision-making process and how we came to where we are today.

But I know this: That to be competitive and to attract the best and brightest, we have to be competitive in the salary area.

Senator AKAKA. Thank you for that response. One area of great concern is pay compression among our senior executive ranks. Members of the SES provide the leadership to develop policy and carry out agency missions. These men and women manage agencies that dwarf the largest of our corporations and civic institutions. The GAO estimates that 71 percent of the current SES members will be eligible for regular retirement in 5 years.

SES members are faced with artificial caps on pay that have resulted in pay compression for most of their careers. We now have a situation where executives at a high level of government service receive the same pay, regardless of their pay level or their job responsibilities. My question is do you support legislation to lift the pay cap so that pay compression can be alleviated?

Ms. JAMES. I am not prepared to address any particular piece of legislation, Mr. Chairman, but I will tell you this, that I do recognize that the pay compression issue is a very serious one, and it really does impact our ability to attract the best and the brightest, and that there are some serious inequities there, and that I would have it as one of my top priorities, to look at this particular issue, to make sure that we can be competitive with the private sector in attracting senior management into the Federal Government service.

Senator AKAKA. As you know, the Federal Government is highly unionized. Over 65 percent of eligible employees are represented by labor unions and covered by collective bargaining agreements. In such an environment, what is the proper role of OPM with respect to working with Federal unions on important workplace issues?

Ms. JAMES. I think that unions have a key and very major role to play. I have already expressed that to them privately and I am happy to do it publicly. They are stakeholders and they represent the workforce. We share many common goals and things that we want to see happen within the Federal Government and on behalf of civil servants. We will not always agree, but we will always disagree respectfully, and they will always have a seat at the table in the decision-making process.

Senator AKAKA. Thank you very much for your responses, Ms. James, and I would like to now yield to my colleague, Senator Cochran.

Senator COCHRAN. Thank you very much, Mr. Chairman.

Ms. James, I know you realize that in the private sector there have been some very successful experiments with building morale and keeping good employees, by having such innovative practices as cafeteria-style benefit plans, where employees select from an array of benefits what would be more suitable to their own personal situations—what they would find more attractive. Do you think the Federal Government can learn and borrow from the private sector some of these ideas? If so, do you think enough has been done in this area to try to make available more flexible benefit programs for employees in the Federal Government?

Ms. JAMES. Certainly. I always believed that we can learn from the private sector, and I hope, in the very near future, the private sector will be looking to the Federal Government to see what they can learn from us, out of our creativity and innovation. In terms of cafeteria benefits, I think what is most important, before having done an in-depth study of that and looking at the issue, is to affirm that Federal employees need flexibility, they need choice, they need options, and that has always been the hallmark of the Federal benefit program, and I think that needs to continue to be the case.

In terms of whether or not we offer something called cafeteria benefits or something like that, I think that is a question still to be considered and one that we need to get the stakeholders to the table and look at and talk about, with Federal employees always at the center of the discussion and what benefits them the most.

Senator COCHRAN. When we are able to recruit very talented and bright workers into the Federal workforce, sometimes they get frustrated when they find that they are up against ceilings. We have heard of the glass ceiling, in the case of women employees. We

have heard of other ceilings; that the slowdown in the view of some of these talented workers, that they have to wait their turn before they can have an opportunity to move up the ladder and reach the potential that they think they are due or that they are entitled to, because of their hard work and achievement.

Do you think there is a way to improve opportunities for the best and the brightest who do choose to come into Federal Government service, and can they be rewarded in this system for their talent, for their hard work, commensurate with the contributions that they are making to the job?

Ms. JAMES. I think it is absolutely imperative that we look for creative ways of doing just that, while at the same time balancing one of the core missions of OPM, which is protecting the merit system, to make sure that it is done fairly and equitably and to protect employees. We can, at the same time, acknowledge creativity, acknowledge hard work, acknowledge someone who is doing an excellent job, and make sure that it is done fairly and equitably. I believe that is one of the missions of OPM, to try to figure out how to give that flexibility to the agencies, but, at the same time, to protect the integrity of our merit system.

Senator COCHRAN. I think it is clear to me that you have the background and experience in the State of Virginia Government service that you have already demonstrated an ability to do, and those who have worked with you and have observed you over the years, that you are an outstanding choice for this job, and I wish you well and hope that you have a very satisfying and enjoyable period of service as director of Office of Personnel Management.

Ms. JAMES. Thank you, Senator.

Senator AKAKA. Thank you very much.

Senator Voinovich, any questions?

Senator VOINOVICH. Ms. James, as you know, I presented a study to President Bush entitled, "Report To the President: The Crisis in Human Capital." Subsequent to that, GAO Comptroller General David Walker has designated the human capital crisis as a high-risk area. Have you had a chance to familiarize yourself with my report or with Mr. Walker's report?

Ms. JAMES. Yes, Senator.

Senator VOINOVICH. Have you had a chance to talk to Mr. Walker?

Ms. JAMES. I have.

Senator VOINOVICH. I am not going to ask you to get into details, but assuming that things work out the way we hope they do, I would really like your thoughts, best thoughts, on how you would go about responding to that report I gave to the President, and Mr. Walker's designation of high-risk. You are going to have to be very, very aggressive to get your job done. You are going to have to be a real advocate, frankly, for things that have been neglected for a long time—this concept of Federal workers as second-class citizens, let's get rid of them, that they are costs to be cut instead of assets to be valued—we need a whole new attitude if we are going to keep the people that work in the Federal Government today and attract new people.

I just met with one of the deans at the Harvard John F. Kennedy School, and today about 40 percent of the young men and women

go on into government. Ten years ago, it was 75 to 80 percent. The Maxwell School at Syracuse, where Sean O'Keefe was a professor, is similar.

We have a major challenge ahead of us, and you are going to have some tough decisions to make. One of them deals with something I alluded to earlier, and then Senator Akaka mentioned it again, and that is the pay compression that we have in the Senior Executive Service. The problem, basically, is that Congress has said the SES cannot get a pay increase unless our salaries go up. Do you think that is a good policy and what would your position be in regard to it?

Ms. JAMES. Does this include Senate salaries?

Senator VOINOVICH. Yes. That is right.

Ms. JAMES. Thank you for that question, Senator Voinovich. Senator, I really do not—your question, I think, goes to whether or not it should be tied to congressional salaries. I do not know the reason why it is. If there is a logical reason why that is the case, then perhaps. However, I do know this: That in just my quick review of this, as I have been preparing for these hearings, I was alarmed at the numbers that you quoted this afternoon, about the Senior Executive Service.

I intend very quickly to bring in some of the management associations for the SES and have them sit down with me to look at this, to talk about what we can do. I do know that if this issue is not addressed, we will continue to have a drain of some of the most important and valuable assets that this government has, and so we have to look at some creative ways to do that. But the specific question about whether or not it should be tied to congressional salaries, I am not sure what the rationale behind that was. So I am not sure I can answer.

Senator VOINOVICH. Well, if it is illogical and defies common sense, will you have the courage to say we ought to change it?

Ms. JAMES. Senator, I have never been known for being lacking the courage to say what I think.

Senator VOINOVICH. Good. I am glad to hear that. One of the problems that we have in the Federal Government is the overly bureaucratic hiring process. Last week, and this might interest Senator Akaka and Senator Cochran, I had a meeting at Wright Patterson Air Force Base, and I brought in six young men and women who were in college, and asked them whether or not they were interested in going into the Federal Government, and if they were, why, and if they were not, why not.

We had the colonel who manages the research lab at Wright Patterson, probably one of the best in the country, probably in the world. One of the young men was an electrical engineer, and the colonel told him about the opportunities that were available. He said, "Young man, we have a co-op program, and I will hire you right away." I looked at the colonel and I said, "Are you serious?" He said, "Yes, I will offer him a job." I said, "Well, how long will it take before you get approval to put him on the payroll?"

Six months. He has to go through some personnel office in Texas and fill out all kinds of paperwork. I thought that was just incredible, and one of the things that I think we need to do is reform the hiring process and make it more flexible.

For example, at GAO, they have more flexibility. At the FAA, they have more flexibility. Senator Akaka, we ought to have a hearing and bring in those agencies to see if those flexibilities that they have been given will make a difference. But I would be interested, did you have any experience at all with this issue in the past?

Ms. JAMES. Well, Senator, let's just say I have a great deal of experience right now about how long it takes to get into a Federal job.

Senator VOINOVICH. We promise to fix that, not for this administration, but for the next.

Ms. JAMES. But that aside, I do believe that it is important to give the flexibilities to the agencies that they can have, to respond to a very fast-paced world out there, where the best and brightest are not going to sit around for 6 months and wait for a return phone call to find out whether or not they have a job. We have got to do better, and I think that is something we can look at early, look at quickly.

I want to see what we can do right now within the parameters of the organization as it exists today. If we need new technologies, if we need new systems, if we need new policies, then we are going to get them, because it is—to be a highly-competitive employer, you cannot take 6 months from the time a decision is made to bring someone on the payroll. That is unacceptable.

Senator VOINOVICH. So in the event that it appeared you could speed up the process by decentralizing, you would give consideration to doing that?

Ms. JAMES. Yes, I would.

Senator VOINOVICH. Thank you.

Senator AKAKA. Thank you very much, Senator. We have gone through one round of questions, and I would like to go into the second round. I have a few questions.

The President's fiscal year 2002 budget proposal would end required coverage of contraceptives by health insurance plans participating in the Federal Employee Health Benefit Program. Although the rationale for ending the coverage was not explained, there is little evidence that required coverage of contraceptives in the program imposes any additional premium costs, and Justice Lawrence, a Federal judge in Seattle, ruled that not extending this right: "Creates a gaping hole in coverage offered to female employees." The question is do you support rescinding the contraceptive coverage mandate for Federal employees, and if so, what reason?

Ms. JAMES. Mr. Chairman, I do support the President and his budget process. As I said to the staff earlier, I am not entirely sure what the rationale or the decision-making process was behind that. I certainly am not opposed to contraceptive coverage for Federal employees. I think it is offered in a majority of the health plans. It is available if someone wants to choose a plan that has that.

I think one of the hallmarks of the Federal health plan has always been flexibility and choice options, and those options are still there for fellow employees.

Senator AKAKA. I am sure you are aware that Blue Cross–Blue Shield, the largest participating FEHBP carrier, submitted a proposal to OPM during the call letter process, to change its program

offerings. Can you tell us what is happening, and how the proposal will affect other participating plans in the program?

Ms. JAMES. Senator, I have not been involved in those proceedings at all. I have not been briefed by OPM staff on the progress of that particular contract, and so I am afraid I am not prepared to answer those kinds of questions here today.

Senator AKAKA. A number of groups have raised concerns with me that Congress should be involved as we move through this process. I strongly believe that OPM must take whatever steps necessary to ensure that choice and competition remain. A question for the record: Will you please give us your assurance that you will seek our input and keep us informed as these negotiations proceed?

Ms. JAMES. Mr. Chairman, I will seek your input. I will seek the input, as well, of those individuals who are stakeholders in this, and I think it is important to have that kind of input before you can make a quality decision. So I assure you that you will definitely be involved in, and a part of, that process.

Senator AKAKA. Well, I thank you very much for your responses. I would like to ask my colleague if he has any questions.

Senator COCHRAN. Mr. Chairman, I have no other questions of the witness.

Senator AKAKA. Well, I thank my fellow Senators for their participation today. I have no further questions at this time. However, Members may submit questions in writing to the Committee, and the Committee would appreciate a timely response to any questions that we may have for you. The record will remain open for these questions and for further statements from my colleagues.

Ms. James, there are many people and organizations that look forward to working with you on the challenges ahead, and the Senate is one of them. I thank you again for being here this afternoon, for your cooperation with this process and for accepting this nomination to public service.

If there is no further business before the Committee, I will call for the adjournment. The Committee stands adjourned.

[Whereupon, at 3:42 p.m., the Committee was adjourned.]

APPENDIX

FRANK R. WOLF
10TH DISTRICT, VIRGINIA

MITTEE ON APPROPRIATIONS
SUBCOMMITTEES:
CHAIRMAN—COMMERCE, JUSTICE, STATE AND JUDICIARY
TRANSPORTATION
TREASURY, POSTAL SERVICE, GENERAL GOVERNMENT

CO-CHAIR—CONGRESSIONAL HUMAN RIGHTS CAUCUS

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House of Representatives

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(800) 850-3463 (IN STATE)

www.house.gov/wolf/

June 20, 2001

The Honorable Joseph I. Lieberman
Chairman, Committee on Governmental Affairs
U.S. Senate
Washington DC 20510

Dear Senator Lieberman:

It with tremendous pleasure that I write in support of President Bush's nomination of Kay James to serve as the director of the Office of Personnel Management.

Kay James has been a personal friend for over a decade. Her life story, from her very humble beginnings to her outstanding service to the Commonwealth of Virginia and our nation, is quintessentially American. She loves her country and holds both public service and the nation's public servants in the highest regard.

Over the course of the past four years, I have had the opportunity to work closely with Kay during and after her tenure as the chairman of the National Gambling Impact Study Commission. Through leadership and perseverance, Kay successfully guided the bipartisan commission for two years until it reached a final, consensus report on many hotly contested issues related to legal gambling. This accomplishment was based largely on Kay's core commitment to principled policy development – meaning that mutual respect, open communication and a willingness to compromise are the cornerstones to trust.

Since the conclusion of the commission, I have had several opportunities to request Kay's opinion on numerous issues. In keeping with her style and reputation, Kay has maintained full accessibility and has been very prompt to answer my calls and offer her advice and assistance. I know that many of my colleagues in both the House and Senate also have experienced this same level of service from Kay for many years. Given the number of critical policy concerns affecting our federal workforce, and the need for the President and Congress to work closely together to develop effective solutions, I welcome the opportunity to work with an experienced professional with a reputation for honesty and responsiveness.

If Kay is confirmed, I believe that the President and the United States Senate will have acted together to provide the nation with an inspirational role model capable of capturing the attention and imagination of the public and a future generation of public servants.

Please do not hesitate to contact me if you wish to discuss this further. Thank you and best wishes.

Sincerely,

Frank R. Wolf
Member of Congress

FRW:cs

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HOUSE OF REPRESENTATIVES
WASHINGTON, D. C. 20515

JUN 19 PM 5:47

THOMAS M. DAVIS
ELEVENTH DISTRICT
VIRGINIA

June 18, 2001

The Honorable Joseph I. Lieberman
Chairman
Senate Governmental Affairs Committee
SD-340
Washington, D. C. 20510

Dear Chairman Lieberman:

I have prepared this letter today in support of Kay James, President Bush's nominee for Director of the Office of Personnel Management. I have known Mrs. James for many years and consider her to be both a personal friend and a fine representative of the Virginia tradition of public service.

I witnessed Kay's abilities first-hand many years ago when I served as the Chairman of the Fairfax County Board of Supervisors. In 1993, I appointed Kay to serve on the Fairfax County School Board, one of the largest school districts in the nation. I recruited Kay because of her reputation for fairness, knowledge of education issues and concern for children and parents. She quickly established a record for independent and deliberate thought and earned the respect of parents, teachers, union officials and activists throughout her district.

Although I was sorry to see her resign from the Board in 1994 to serve Governor George Allen, I knew that every Virginia citizen would benefit from the leadership she had provided Fairfax County. I watched with great pride as Kay worked diligently to forge consensus among elected leaders and activists on such controversial issues as health care reform and welfare reform. Since that time, I have met scores of elected officials and citizens across the country who know of Kay's experience in developing effective solutions to the most difficult public policy issues.

As one who represents tens of thousands of Federal workers, retirees and their families, I am very confident that Kay will bring her record of open and creative leadership to the critical issues affecting the Federal workforce. I know that she will enthusiastically embrace the challenges posed by an aging Federal workforce, low recruitment and retention rates and diminished respect for the Federal workers. I also know that she will do this in a manner that is respectful to all parties involved in the decision process, especially employees and their representatives. Simultaneously, I am highly confident that the routine operations of OPM will inspire greater confidence among those who rely upon OPM for their retirement, health care and survivor benefits.

Should the Committee vote to confirm Kay, I believe that it will be a tremendous honor for Virginia and a very positive move for the Federal government. Please contact me if you have any questions or concerns.

Sincerely,

Tom Davis

Tom Davis
Member of Congress

Cc: The Honorable Fred Thompson

PREPARED STATEMENT OF OTHONIEL ARMENDARIZ

I AM HONORED AND PROUD TO BE NOMINATED BY PRESIDENT GEORGE W. BUSH TO BE A MEMBER OF THE FEDERAL LABOR RELATIONS AUTHORITY. FROM DECEMBER 1989 THROUGH MARCH 1997, I HAD THE DISTINCT PRIVILEGE OF SERVING AS A MEMBER OF THE FLRA AFTER HAVING BEEN NOMINATED TWICE BY PRESIDENT GEORGE H.W. BUSH AND CONFIRMED TWICE BY THE UNITED STATES SENATE. AS THE RESULT OF MY PREVIOUS SERVICE, I FULLY UNDERSTAND AND APPRECIATE THE IMPORTANT ADJUDICATORY ROLE AND RESPONSIBLITIES THAT THE THREE AUTHORITY MEMBERS PERFORM. THESE ROLES AND RESPONSIB!LITIES ARE IMPORTANT IN PROVIDING LEADERSHIP WHEN ESTABLISHING POLICIES AND GUIDANCE RELATING TO MATTERS UNDER THE FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE.

THE FLRA'S ROLE IN CONTRIBUTING TO A SUCCESSFUL FEDERAL LABOR-MANAGEMENT RELATIONS PROGRAM IS PARTICULARLY IMPORTANT AS THE FEDERAL WORKFORCE EVOLVES TO ADDRESS THE NEW CHALLENGES AND OPPORTUNITIES THAT LIE AHEAD. IN ENACTING THE STATUTE OVER TWENTY YEARS AGO, CONGRESS FOUND THAT

"THE PUBLIC INTEREST DEMANDS THE HIGHEST STANDARDS OF EMPLOYEE PERFORMANCE AND THE CONTINUED DEVELOPMENT AND IMPLEMENTATION OF MODERN AND PROGRESSIVE WORK PRACTICES TO FACILITATE AND IMPROVE EMPLOYEE PERFORMANCE AND THE EFFICIENT ACCOMPLISHMENT OF THE OPERATIONS OF THE GOVERNMENT."

THROUGH THE RESPONSIBILITIES ENTRUSTED TO IT BY CONGRESS, THE FLRA HAS A UNIQUE OPPORTUNITY TO CONTRIBUTE TO THIS PUBLIC INTEREST AND TO ENSURE THAT THE PURPOSES AND POLICIES OF THE STATUTE ARE IMPLEMENTED EFFECTIVELY AND EFFICIENTLY.

I LOOK FORWARD TO THE CONFIRMATION PROCESS AND PLEDGE THAT, IF CONFIRMED, I WILL TAKE SERIOUSLY THE RESPONSIBILITIES OF THE POSITION OF FLRA MEMBER AND CARRY OUT THESE RESPONSIBILITIES TO THE BEST OF MY ABILITY.

THANK YOU VERY MUCH.

OTHONIEL ARMENDARIZ

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.)

   OTHONIEL ARMENDARIZ
   TONY ARMENDARIZ

2. **Position to which nominated:**

   Member, Federal Labor Relations Authority

3. **Date of nomination:**

   April 30, 2001

4. **Address:** (List current place of residence and office addresses.)

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5. **Date and place of birth:**

   Date of Birth: June 15, 1924
   Place of Birth: Ciudad Victoria Tamaulipas, Mexico

6. **Marital status:** (Include maiden name of wife or husband's name.)

   Marital Status: Married
   Spouse: Blanche (Clark) Armendariz

7. **Names and ages of children:**

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8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

   B.S. – Business Administration, Trinity University
   San Antonio, Texas
   Degree Received: 5/52
   Dates Attended: 9/49 – 5/52

J.D. - St. Mary's University School of Law
San Antonio, Texas
Degree Received: 5/56
Dates Attended: 9/53 – 5/56

MCL - Southern Methodist University School of Law
Dallas, Texas
Degree Received: 6/60
Dates Attended: 9/59 – 6/60

Universidad Catolica Andres Bello, Facultad de Derecho
Caracas, Venezuela
Degree Received: None
Dates Attended: 10/61 – 7/65

Milby High School
Houston, Texas
Degree Received: 5/43
Dates Attended: 9/42 – 5/43

9. **Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

3/97 – Present	Retired
10/89 – 3/97	Member, Federal Labor Relations Authority Washington, DC
6/78 – 10/89	General Counsel University System of South Texas Kingsville, Texas Provided members of the Board of Directors of the System, the Chancellor, Presidents of Laredo State University, Corpus Christi State University and Texas A&I University as well as other administrative system officers with legal advice concerning federal and state laws affecting higher education in general and the three institutions comprising the System in particular. Coordinated all legal matters and litigation affecting the three institutions with the Office of the State Attorney General.
1/77 – 6/78	Assistant Attorney General State of Texas Austin, Texas Assigned to Education and Civil Rights Section of State and county Affairs Division. Assisted state agencies and universities during EEOC administrative investigatory process, and in conciliation agreement negotiations. Defended a number of state agencies in trial of education and civil rights cases under Title VII

of the Civil Rights Act of 1964. Named EEO coordinator for Attorney General's Office.

2/75 – 12/76

District Counsel
Houston District Office
U.S. Equal Employment Opportunity Commission

Provided District Director, supervisors and staff members with legal advice concerning the application of Title VII of the Civil Rights Act of 1964, and other laws and regulations of EEOC and other federal agencies. Advised and assisted appropriate officials in preparation and issuance of subpoenas and enforced subpoenas issued by EEOC when necessary. Provided legal advice and assistance to aggrieved persons in preparing their cases.

8/73 – 2/75

Assistant Attorney General
State of Texas
Austin, Texas

Assigned to Insurance Banking & Securities Division. Transferred to Anti-Trust and Consumer Protection Division. Investigated, filed and participated in trial of cases in violation of the Texas Deceptive Practices and Consumer Protection Act.

7/72 – 3/73

Executive Vice-President
Homecare de Venezuela, S.A.
Caracas, Venezuela

Set up company's operations. Recruited, trained and motivated sales personnel. Attended to necessary legal requirements and steps to do business in Venezuela.

4/69 – 7/72

Marketing & Distributor Training
Homecare de Mexico, S.A.
Mexico City, Mexico

Assisted in marketing and distributor training and acted as troubleshooter. Also, recruited and trained sales personnel and managed all phases of privately owned cosmetic business.

10/65 – 4/69

President
Venezuelan Operations
Tupperware Division
Rexall Venezuela, CA
Caracas, Venezuela

Performed organizational functions including drafting of Articles of Incorporation and By-laws. Selected warehousing facilities. Hired marketing and sales personnel. Established and implemented training procedures. Instituted administrative and distribution procedures. Responsible for personnel management

and budget control. Assisted in organizing and establishing similar operation in Peru, including recruitment of top management personnel.

9/60 – 10/65 Associate Attorney
Law Office of Jesse Guy Benson
Caracas, Venezuela

Handled organization, merger and/or liquidation of corporations. Participated in contract negotiations. Wrote legal opinions. Counseled and advised U.S. client companies concerning matters of Venezuelan Corporation, Labor and Tax Law.

9/59 – 6/60 Student
Southern Methodist University
Dallas, Texas

Pursued studies leading to Master of Comparative Law.

3/58 – 9/59 Associate Attorney
Law Office of Arthur Domangue & Associates
San Antonio, Texas

Engaged in the general practice of law.

9/56 – 3/58 Assistant to President
Compania de Azufre Veracruz, S.A.
Mexico City, Mexico

Wrote procedures for various departments and assisted president of company in administrative matters for sulphur producing company.

9/49 – 7/56 Radio announcer (Spanish) and account executive
KIWW Radio Station
San Antonio, Texas

Worked way through college and law school.

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.

None.

11. **Business relationships:** List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

Member, Board of Directors
Texas A&I University Federal Credit Union

Executive Secretary

University System of South Texas Foundation, Inc.

12. **Memberships:** List all memberships and offices held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

Member
Texas Bar Association (Professional)

Member
Kleberg-Kenedy County Bar Association (Professional)

Member
National Association of College and University
Attorneys (NACUA) (Professional)

Member
Texas Association of State University Attorneys (TASUA) (Professional)

Member, Board of Director
Corpus Christi Chamber of Commerce (Business)

Member, Board of Director, and Secretary
Kingsville Rotary Club (Civic)

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

None.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 5 years.

1995-2000: $250 each year to the Republican National Committee

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

SMU – Fellowship to obtain Masters of Comparative Law (1959 – 1960)

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

None.

16. **Speeches:** Provide the Committee with four copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

None.

17. **Selection:**

(a) Do you know why you were chosen for this nomination by the President?

I feel that it may have been in response to my request to serve in this Administration, and the President's desire to place qualified minority members in high governmental executive positions.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I firmly believe that my experience for many years in the employment and civil rights area has provided me with a strong background that will allow me to apply the guidelines and policies of the Authority in the manner intended by Congress.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

   None.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

   None.

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

   None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

   None.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide copies of any trust or other agreements.)

   None anticipated.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

   Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

   No.

2. Have you ever been investigated, arrested, charged or held by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

   No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

Yes. My wife and I co-signed a note in 1979 on a loan from the SBA. The principal debtor defaulted. The SBA sued for collection. The suit was settled out of court. This matter was fully explained and disclosed during the FBI investigation.

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?

No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

No additional information.

E. FINANCIAL DATA

The answers to the financial portion of this questionnaire are available for inspection in the offices of the Senate Governmental Affairs Committee.

AFFIDAVIT

OTHONIEL ARMENDARIZ, being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

OTHONIEL ARMENDARIZ

Subscribed and sworn before me this 7th day of May, 2001

Sharon K. Larkin
Notary Public
In and For the State of Texas

Commission Expires: 12/8/2004

SHARON K. LARKIN
MY COMMISSION EXPIRES
December 8, 2004

Pre-hearing Questionnaire for
Othoniel Armendariz to be a
Member, Federal Labor Relations Authority

I. Nomination Process and Conflicts of Interest

1. Why do you believe the President nominated you to serve as a Member on the Federal Labor Relations Authority (FLRA)?

   I believe that the President nominated me because of my previous experience as a Member of the FLRA and because of his desire to have qualified minority individuals serve in his Administration.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

   No.

3. What specific background and experience affirmatively qualifies you to be Member of the FLRA? Please describe your background and experience in relation to FLRA's various roles.

   I believe my background is uniquely suited for this position due to my previous tenure as a Member of the FLRA between 1989-1997. During this almost eight-year period, I participated in over two thousand decisions that were before the agency. These decisions covered all issues within the FLRA governing statute.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as Member of the FLRA? If so, what are they and to whom have the commitments been made?

   No.

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.

   No.

II. Role and Responsibilities

1. What is your view of the role of a member of the FLRA?

   I view the role of a member as fulfilling the responsibilities set forth by Congress in section 7105 of the Federal Service Labor-Management Relations Statute (5 U.S.C. § 7105). Under section 7105, the Authority is charged with providing leadership and guidance relating to matters under the Statute and with resolving a variety of cases that come before the Authority. In exercising these responsibilities, a member must give thoughtful consideration to the nature of the issues in a case, Congress's intent as expressed in the language of the Statute, and relevant administrative and judicial precedent.

2. In your view, what are the major challenges currently facing the FLRA? What do you plan to do, specifically, to address these challenges, considering the knowledge you bring to your position from your previous experience with the Authority?

   As I have been away from the Authority since 1997, I do not have first-hand knowledge of the specific major challenges currently facing the FLRA. However, it is my understanding that the FLRA, like many other federal agencies, is facing challenges in the area that has been referred to as "human capital investment." These challenges include such matters as the recruitment and retention of a skilled workforce at a time when significant numbers of employees are becoming eligible for retirement. It is also my understanding that the FLRA and many other agencies are also facing challenges in how to use rapidly changing technology to perform their missions in the most cost-effective manner. If confirmed, I would use my previous experience and familiarity with the Authority to identify specific issues in these and other areas and develop options to address these challenges.

3. What will be your long-term priorities as an FLRA member?

   If confirmed, my main long-term priority will be to do my best to support a stable and productive federal sector labor-management relations program that contributes to an effective and efficient government. I believe that this priority can best be accomplished through the timely issuance of sound decisions that reflect the intent of Congress as expressed in the Statute.

III. Policy Questions

1. FLRA's strategic plan lists four goals for the agency:

   To provide high quality services that timely resolve disputes in the Federal labor-management relations community;
   To use and promote alternative methods of resolving and avoiding disputes and to

provide services to enhance labor-management relationships;
To develop, manage, and utilize the FLRA's internal systems and processes to meet program needs; and
To develop, manage, and utilize the FLRA's human resources to meet program needs.

Given your previous service as a member of the Authority, what is your assessment of how well FLRA is meeting each of these goals? Assuming that more progress is appropriate for the goals, what more do you believe FLRA should do in relation to each goal? What role do you see for yourself in helping FLRA achieve these goals? Do you believe FLRA should have any additional goals? If so, please specify what those goals would be and briefly what you believe FLRA should do to achieve them.

As I stated above in response to question 2 in Part II, I have been away from the Authority since 1997, and therefore do not have first-hand knowledge of how well at this time the FLRA is meeting each of these goals. I am aware that in its Fiscal Year 2000 Annual Program Performance Report to Congress, the FLRA reported that it fully met or exceeded 21 of its 28 performance goals and that it substantially met the remaining seven goals.

Assuming that more progress is appropriate for these goals, I believe that the FLRA should use the established strategic planning process to evaluate its progress as to these goals, identify those specific areas in which improvement is needed, develop realistic options, and implement the most appropriate options for addressing those matters. I believe that I would be able to provide a valuable perspective on this process, based on my previous experience with the Authority, in working with my colleagues to decide strategic planning issues.

I would respectfully reserve comment on whether the FLRA should have any additional goals until I had an opportunity to engage in the strategic planning process and evaluate the current FLRA plan.

2. Last year, FLRA reported that the Authority reduced its inventory of cases awaiting a merit decision by more than half during fiscal year (FY) 1999. Do you believe the Authority caseload has been reduced sufficiently, or are further steps necessary? If more needs to be done, what specific actions do you think are needed to address the backlog issue?

Whether the Authority caseload has been reduced sufficiently would require a detailed analysis of current and historical data, including not just numbers of case input and production and case-processing times but also the nature of the issues presented in the cases. Parties in cases before the Authority should be able to expect timely and well-reasoned decisions. If confirmed, I would look forward to analyzing the relevant data and working with my colleagues to ensure that all that can be done is being done to provide the parties with timely and well-reasoned decisions.

3. FLRA also reported that the Authority reduced its case processing time during FY 1999. Do you believe the case processing time has been reduced sufficiently, or are further steps necessary? If more needs to be done, what specific actions do you think are needed to

address the issue?

My answer to this question is similar to my answer to the preceding question. For the parties involved in a dispute, a timely decision from the Authority is critical. Typically, the parties in any given case desire a decision from the Authority as soon as possible. However, decisions also need to be well-reasoned, and this consideration also needs to be taken into account in the decision-making process. Again, if confirmed, I would do my best to ensure that the Authority provides the parties with timely and well-reasoned decisions.

4. Of course, not all FLRA cases are the same. Do you believe there should be different case processing timeliness goals for different types of cases? If so, what do you believe those goals should be, or do you believe FLRA should undertake a systematic effort to set case processing timeliness goals for various types of cases?

In enacting the Statute, Congress established a specific case-processing time frame for the Authority only in section 7105(f) of the Statute. As implemented in the FLRA's regulations in 5 C.F.R. § 2422.31(e), the Authority must take action within 60 days of the filing of applications for review of Regional Directors' decisions and orders in representation cases. If the Authority does not grant review within 60 days, the action directed by the Regional Director becomes the action of the Authority at the end of the 60-day period. I note that the only other instance in the Statute in which Congress made reference to case processing times was in section 7117(c)(6), dealing with negotiability proceedings. In that section, although Congress did not establish a specific case-processing time frame, it did state that the Authority shall expedite negotiability proceedings to the extent practicable and shall issue written decisions at the earliest practicable date.

I believe that the issue of case-processing timeliness goals should be considered as part of the strategic planning process. Options such as setting goals based on types of cases or other ways of differentiating among cases should be considered and evaluated based on how well they implement the intent of the Statute and how well such options would contribute to the effectuation of the FLRA's strategic planning goals.

5. In May 2000, FLRA's General Counsel said that while the number of unfair labor practice (ULP) complaints issued by his office was consistent with the prior fiscal year, the number of ULP hearings held before administrative law judges had more than doubled for the same period. Given your experience as a prior member of the FLRA, what do you see as the reason for a greater proportion of ULP cases going to hearing and what are the implications for the Authority's workload and case processing?

There are many possible factors that could contribute to an increase in the number of ULP hearings before administrative law judges. These factors include the nature of the issues in the disputes, the relationship of the parties to the dispute, and other factors. I hesitate to speculate since only the parties to those disputes know the actual reasons. As for any implications for the Authority's workload and case processing, it is possible that an increase in ULP hearings could result in an increase in ULP cases coming before the Authority. The

Authority would need to monitor these trends and be prepared to respond accordingly.

6. There has been increased use of alternative dispute resolution (ADR) to deal with disputes in the federal workplace, including those arising under the Federal Service Labor-Management Relations Statute. Some have pointed to the success of ADR in bringing about interest-based resolutions while reducing the adversarial nature of the process and improving relations between labor and management. Others have said that although ADR is a useful tool, an emphasis on the use of ADR could create undue pressures to reach settlements. What are your views on the use of ADR to resolve federal workplace disputes?

   In my view, ADR can provide an effective means in appropriate circumstances for parties to avoid unnecessary litigation and to resolve their own workplace disputes. A key to the success of any ADR effort is that it is viewed by the parties to a dispute as a voluntary, not a mandatory, alternative that is available for them to use if they so choose. ADR also works most effectively, in my view, where the parties are fully aware of their statutory rights and responsibilities, including the full range of options available to them for attempting to resolve the matter in dispute. In parties have this knowledge, they can make an informed decision as to whether to engage in an ADR effort to attempt to resolve their dispute.

7. Overall, the number of cases coming before the FLRA has declined over the last decade. To what factors do you attribute this trend?

   While I am not aware of any definitive way to determine what has caused this trend, it is likely that several factors over the years have contributed to this trend. Some of the decline may reflect the fact that in the early years of the Authority's existence, parties brought cases before the Authority in order to resolve major unsettled questions of federal labor-management case law under the Statute. With the development over the years of a greater body of administrative and judicial precedent, more principles of federal sector labor-management relations case law have been established and fewer cases need to be litigated over these principles. Another factor that may have contributed to this trend could be the increased awareness and use of ADR, referenced above.

8. Earlier this year, President Bush revoked Executive Order 12871 on federal labor-management partnerships. Some have said that the order brought about improvements in the way labor and management work together to serve the public, while others have said that an executive order was not necessary to the achievement of collaborative labor-management relations. What are your views in this regard, and what implications do you see for the future of federal labor-management relations?

   President Bush issued Executive Order 13203 on February 17, 2001. That Executive Order revoked Executive Order 12871, which required Federal agencies to form labor-management partnerships for management purposes, and also revoked the Presidential Memorandum of October 28, 1999, which reaffirmed and expanded upon the requirements of Executive Order 12871. Executive Order 13203 also stated that nothing in the order shall abrogate any

collective bargaining agreements in effect on the date of the order. The Office of Personnel Management (OPM) issued implementing guidance on March 1, 2001, which stated that the order does not prescribe any particular approach to labor-management relations and that agencies have discretion under the Statute to adopt a labor relations strategy best suited to their own needs.

In my view, the parties to a labor-management relationship are in the best position to determine what particular labor relations strategy is best suited for them. Executive Order 13203 and OPM's implementing guidance recognize that the parties have the flexibility to make that determination and to modify it if circumstances warrant. As to the implications of Executive Order 13203, it is my hope that parties will take this opportunity to examine their labor-management relationships in order to determine how they can best contribute to an effective and efficient government.

9. Describe your vision of what the relationship should be between the FLRA and the Office of Personnel Management, the Merit Systems Protection Board, and the Office of Special Counsel.

These agencies all perform specific, discrete functions in the federal employment arena. Relevant statutes and case law delineate these specific functions. Each agency is aware of the functions of the others, so as to ensure that employment issues are before the proper agency. These agencies have been working well in that manner for many years.

10. What is your assessment of the current state of Federal labor-management relations?

My assessment, based on my previous service with the FLRA, is that there is a broad range of federal labor-management relationships. Some agencies and unions have stable and positive working relationships that contribute to the public interest, and others have relationships that are less productive. Labor-management relationships in the Federal government have had to adapt to different challenges over the years, and that will likely continue to be true for the foreseeable future. How agencies and unions respond to these challenges will have a large influence in determining the nature of their relationships.

11. Given your many years of experience with FLRA, what improvements, if any, can and should be made to the Federal Service Labor-Management Relations Statute?

Parties and other interested persons in the federal labor-management relations program who are directly affected by the Statute are in the best position to offer suggestions for changes. However, I would consider all points of view, *i.e.* from Advocates and other representatives, prior to supporting any proposed change of the Statute that may be made in the future.

12. The landscape of the federal workforce has changed over the last decade. More federal jobs have been contracted out or privatized, with federal and contract workers often working side-by-side. What kinds of effects, if any, do you believe this trend is having on federal labor-management relations?

Although I do not have personal knowledge as to what current labor-management relations effects result from this trend, it is fair to say that contracting out is a significant labor relations issue that can generate many issues of concern for all parties. Such issues may result in parties engaging in additional litigation and/or incurring additional strains in their relationship. I believe that the effect of contracting out on labor management relationships depends largely on the parties' prior relationship and how they have dealt with similarly significant issues in the past. Should I be confirmed, I would be interested in looking into what trends have developed due to an increase in privatization within the federal labor force.

13. In July 2000, the Authority convened a focus group of customers to provide their views on the quality of the Authority's written legal decisions, and the measures that can be used to assess that quality. In addition, the Authority solicited written comments on these issues. What do you understand was learned from these initiatives, and what actions do you think the Authority should take to improve the quality and the measures used to assess the quality of FLRA legal decisions?

    I am advised that the Authority received many suggestions as to how to improve its written legal decisions. It is my understanding that these suggestions are being reviewed and analyzed by Authority staff and that in the near future recommendations will be presented to and discussed with the Authority members. If confirmed, I will look forward to participating in these discussions and acting on the recommendations.

IV. Relations with Congress

1. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

   Yes.

2. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?

   Yes.

V. Assistance

1. Are these answers your own? Have you consulted with FLRA or any interested parties? If so, please indicate which entities.

   These answers are my own. With respect to certain factual matters, I have consulted with FLRA staff. I did not consult with any interested parties.

AFFIDAVIT

I, OTHONIEL ARMENDARIZ, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Othoniel Armendariz

TERESA J. MONTGOMERY
Notary Public, State of Texas
My Commission Expires
JAN. 27, 2003

Subscribed and sworn before me this 29 day of May, 2001.

Notary Public

STATEMENT OF KAY COLES JAMES

Before the Senate Committee on Governmental Affairs
June 21, 2001

Mr. Chairman, Senator Cochran and Members of the Committee, I am honored to be here this afternoon to discuss my nomination as Director of the Office of Personnel Management. Thank you, Senators Warner and Allen, for being here today to introduce me. We in Virginia have been the beneficiaries of Senator Warner's remarkable leadership for many years and he certainly epitomizes the best of Virginia's long tradition of public service. It was a tremendous honor to serve in George Allen's cabinet when he was governor and I am certain that he will bring as much vitality, integrity and commitment to principles to this body as he did in almost two decades of service to Virginia.

Mr. Chairman, before I get started, I do want to thank Senator Lieberman and the majority staff, as well as Senator Thompson and his staff, for the courtesies and professionalism extended to me throughout this process. I am perhaps one of the few nominees to have begun the process under the Republican majority and ended it under the Democratic one. To their credit, the staff on both sides worked together and treated me fairly regardless of whom the majority was. If my own experience is any indication of how this Senate will work, I am encouraged and look forward to working closely with members and staff of both sides, if confirmed.

I am truly honored and deeply grateful to President Bush for nominating me to this position. It is not entirely coincidental that it was human resources management that first brought me to Washington nearly twenty years ago and it is this same subject that brings me back today. Whether it is in the corporate world or in the public sector, I firmly believe that the quality of an organization's employees is the single most important factor in determining its success and effectiveness. So questions of recruitment, retention, and fair treatment of federal

employees are as integral to our nation as any national security or economic discussion. The opportunity to address and positively impact these issues at a very exciting time is why I am so grateful and enthusiastic to be nominated for the position of Director of the Office of Personnel Management.

My work in the private sector includes a corporation renowned for its employee programs. At C&P Telephone, now known as Verizon, I learned many of the principles of human resources management that have shaped my work in the thirty years since then. C&P provided career opportunities for women and minorities at a time when such jobs were hard to find. They retained and promoted individuals based upon merit and constantly offered employees the opportunity to improve themselves and their career prospects through training, mentoring and education. And it was there that I learned about the critical and differing roles of labor and management.

In other positions in the private and non-profit sectors, I learned many of the systems that large corporations utilize to manage employees effectively, including performance reviews, benefit package determination, bonuses and incentive pay, and termination policies. When developed and implemented properly, these systems offer not only protection for the employees and the employer, but the capacity to bring about positive and lasting change for the organization.

In the public sector, my personnel management experiences, involving both civil service and political appointees, began in 1989 at the U.S. Department of Health and Human Services starting. During my time at HHS, I managed a public affairs team as the Assistant Secretary for Public Affairs. I later managed a smaller number of appointees and career staff as the Associate Director for State and Local Affairs at the White House Office of National Drug Control Policy and worked with local officials all across the nation. In 1994, I was selected by then Virginia Governor George Allen to serve as the Secretary of Health and Human Resources for the Commonwealth of Virginia. Upon my confirmation by the Virginia General Assembly, I assumed responsibility for the management and policies affecting over 19,000 full-time career employees and thousands of part-time workers.

In each of these positions, I have been involved with major systemic change, budget restrictions and other operational and policy challenges. Without exception, my confidence in the quality and commitment of public servants – both career and non-career employees – was rewarded and we were able to meet these challenges in a positive and successful manner.

This reflects one of the most important lessons that I have learned first-hand, something contrary to what some believe to be the case and critical for the Director of the Office of Personnel Management to understand. The vast majority of career employees are true public servants – talented individuals who have consciously chosen to use their work and skills on behalf of their nation, often at financial or other sacrifice to themselves and their families. They are selfless, willing to work long hours with little recognition, committed to excellence in both product and service, and, if led effectively, capable of unlimited creativity and resourcefulness. If confirmed, I will have the tremendous privilege of assuming a position once held by Theodore Roosevelt. I think the simplest explanation of OPM's mission can be found in Roosevelt's first message sent to Congress as President, where he stated, *"The national government should demand the highest quality of service from its employees, and in return it should be a good employer."*

"*Demanding the highest quality of service from our employees*" means several things. First, it means aggressively recruiting the best and brightest in the nation. The federal government has long been a leader in creating career opportunities for young people and minorities. Today, OPM has the opportunity to model what affirmative recruitment and access can mean in the workplace. As director, I would expand and enhance employment outreach programs in Historically Black Colleges and Universities (HBCUs), Hispanic Association of Colleges and Universities (HACU), minority advocacy groups, fraternal organizations and minority media outlets to recruit quality employees.

This also involves continuing efforts to expedite and streamline the hiring process. Already, OPM is utilizing the Internet to make federal employment opportunities available to all.

The speed and consistency with which individual agencies respond to applicants will determine how competitive we can be in the marketplace of talent.

Secondly, it means encouraging an attitude that recognizes that "the people" are the owners of government and that we owe them courteousness, promptness and thoroughness in our dealings with them.

Third, it means developing and adhering to a true system of merit for the purposes of retention and promotion. If we are truly committed to recruiting, retaining and promoting employees on the basis of merit, then the personal background, activities, or beliefs of individuals outside the workplace are irrelevant, as long as they do not negatively impact the individual's performance. Likewise, we must not shrink from our responsibility to hold employees accountable and correct inadequate or poor performance. To do so, we must maintain an array of responses, which include assessment, training, reassignment, and, in some instances, termination.

Primary to OPM's mission is the responsibility to assure that the values of our American merit system are observed. In the current environment where many agencies are seeking variations from traditional civil service practices, it is important to go back to our core merit system values and assess whether those core values are embodied in agency practices. Regular oversight of agency human resource management (HRM) practices is one mechanism in the effort to hold agencies accountable. Another mechanism involves encouraging agencies to develop their own accountability systems and providing them with technical assistance in doing this. If I am confirmed as Director, I will ensure that OPM informs agencies of the mechanisms already available to them and holds them accountable to civil service core values whether the specific agency is exempt from or bound by the traditional civil service system.

The second part of Roosevelt's message speaks even more directly of OPM's mission: to ensure that the federal government is "*a good employer*." I know that President Bush and the members of this Committee want even more of the federal government; indeed, *it should be among the best employers in the world.*

Because of the nature of public service, we already have a committed workforce. But we must do more to be a good employer. The late businessman, Clarence Francis, once said, "You can buy a man's time; you can buy his physical presence at a given place; you can even buy a measured number of his skilled muscular motions per hour. But you cannot buy enthusiasm, you cannot buy initiative, you cannot buy loyalty, you cannot buy the devotion of hearts, minds or souls. You must earn these."

The depth of our commitment to be among the best employers in the world is the measure of how we earn the loyalty and respect of our federal workforce. We do this first by respecting the commitments made to retired federal employees. We must protect their benefits, honor their service and respond to their needs with as little red tape and bureaucracy as possible.

To our current employees, we must protect the security, quality and costs of their choices in health care, life insurance and other benefits. We must continue to provide benefits that meet the needs of our day, like long-term care insurance and flexibility in making retirement decisions.

Wherever possible and appropriate, we must offer our employees the same tools available to those in the private sector, such as the recent allowance of pre-tax income to be designated for payment of health premiums.

Lastly, we can set a tone and an example of inclusiveness, fairness and openness to new ideas. The notion that labor and management must oppose, outsmart, defeat, or ignore each other has no place in the modern workplace. It is my hope and experience that everyone comes to the table with the same goals: to help make the federal government not only more productive and effective, but also the best possible employer it might be.

OPM can promote the importance of good working relationships between federal agencies and the unions that represent federal employees. We can provide assistance and training to agencies and unions who want to learn how to work together more effectively. And

we can highlight "best practices" in labor-management relations and help both agencies and unions identify and hone the skills they need to achieve similar results.

My own management style includes working closely and honestly with those in the arena to accomplish mutual goals. I am not certain that "partnership" can be mandated, but I think that if we recognize the important role that management organizations, unions and other representatives of federal employees play in the decision making process, then we are likely to maintain a productive relationship that benefits the employees and the employer alike. In discussions since my nomination with union officials and others, I have made the commitment to work closely with them and to include them, to the greatest extent possible, in the decision-making process.

Though I am beginning to develop personal goals and a vision for my tenure at OPM, I am committed to meeting with the various stakeholders and staff and hearing their concerns before developing these further. I am grateful for the suggestions, support and encouragement I have already received from union and management officials, researchers, former OPM directors, and members of Congress. The staff at OPM has already impressed me as some of the finest professionals within the government and I am particularly appreciative of the excellent job Steve Cohen has done as Acting Director. I look forward to getting to know more of these employees in the months to come.

While I am not prepared to discuss specific goals for OPM, I can assure the Committee that I am dedicated to restoring the image long associated with public service, namely, that it is a noble and rewarding profession. I understand that this will be a challenge, but I firmly believe that confidence in the federal government is rooted in the level of respect the nation extends to those who work for our fellow citizens. I am committed to encouraging citizens to consider federal service as a duty, honor and appropriate avenue for fulfilling their citizenship obligations. As we seek to capture the interests of this generation, I believe that we must harness technology to make the application and hiring process easier and develop more flexibility to make the compensation packages more competitive. Finally, I am committed to developing incentives necessary to retain experienced and high-performing workers and to prevent further brain drain

from the federal workforce, and I am committed to ensuring that our policies and programs are truly responsive to the diverse and complex needs of today's government.

While campaigning for president in 1956, Adlai Stevenson spoke about America in a way that aptly describes the opportunities we have in the federal workforce today. He said, "There's a new America every morning when we wake . . . The new America is the sum of many small changes . . . Our task is to guide these changes. For, though change is inevitable, change for the better is a full-time job."

I look forward to the many small and big changes that await us in the future.

Thank you for this opportunity. I would be pleased to answer any questions you might have.

BIOGRAPHICAL & FINANCIAL INFORMATION FOR KAY JAMES

A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.)

   Madeline Kay Coles James

2. **Position to which nominated:**

   Director, Office of Personnel Management

3. **Date of nomination:**

   April 30, 2001

4. **Address:** (List current place of residence and office addresses.)

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5. **Date and place of birth:**

   June 1, 1949 Portsmouth, VA

6. **Marital status:** (Include maiden name of wife or husband's name.)

   Married to Charles E. James, Sr.

7. **Names and ages of children:**

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8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

   John Marshall High School, 9/63-5/67
   Hampton Institute (now University), 9/67 – 6/71, B.S. History/Secondary Education 6/71

9. **Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.

   Senior Fellow and Director, The Citizenship Project — 7/99 to Present
   The Heritage Foundation, Washington, D.C

   Chairman — 01/97-08/99
   National Gambling Impact Study Commission, Washington, D.C.

   Dean, School of Government and Professor of Politics — 02/96-06/99
   Regent University School of Government, Virginia Beach Virginia

Member, Virginia State Board of Education Department of Education, Richmond, Virginia	06/96-10/98
Secretary of Health and Human Resources *Chairman, Governor's Empowerment Commission* Office of the Governor, The Commonwealth of Virginia, Richmond, Virginia	01/94-01/96 01/94-12/94
Senior Vice President Family Research Council, Washington, D.C.	01/93-01/94
Associate Director Office of National Drug Control Policy The White House, Washington, D.C.	12/91-01/93
Executive Vice President and Chief Operating Officer One to One Partnership, Washington, D.C.	12/90-10/91
Assistant Secretary for Public Affairs U.S. Department of Health and Human Services, Washington, D.C.	01/89-11/90
Director of Public Affairs *President, Black Americans for Life Committee* National Right to Life Committee, Inc., Washington, D.C.	04/85-12/88
Personnel Director Circuit City Stores, Inc., Beltsville, Maryland	10/83-03/85
Director of Community Education and Development Housing Opportunities Made Equal, Richmond, Virginia	07/81-10/83
Conference Coordinator VA Disabilities Protection & Advocacy Office, Richmond, Virginia	04/78-09/78
Group Supervisor C&P Telephone Company, Richmond & Roanoke, Virginia	05/72-01/74

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.

Member, Virginia Legislative Commission on Judicial Appointments (2000)
Chairman, Maternal and Child Health Council (1994-1995)
Member, Joint Committee on Immigration Policy (1995)
Chairman, Virginia Health Planning Board (1994-1995)
Member, Disability Commission (1994-1995)
Member, Virginia Poverty Commission (1994)
Member, Advisory Commission on Welfare Reform (1995)
Member, Joint Commission on Health Care (1994-1995)
Chairman, Specialized Transportation Council (1994-1995)
Member, Council on Indians (1994-1996)
Member, Governor's Advisory Board for Opportunity Virginia (1994-1995)
Chairman, Long-Term Care Council (1994-1995)
Member, Council on the Child Day Care & Early Childhood Programs (1994-1995)
Member, Commission on the Reduction of Sexual Assault Victimization (1994-1995)
Member, Virginia Council on Coordinating Prevention (1994-1995)
Member, Fairfax County School Board (1993)
Commissioner, National Commission on Children (appointed by President Reagan in 1988, reappointed by President Bush, 1989)
Member, White House Task Force on the Black Family (1988)

11. **Business relationships:** List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

Board of Directors, AmeriGroup, Inc., Virginia Beach, VA (1999-present): *a provider of managed health care services exclusively to low-income families and the disabled.*
Board of Directors, PhyCor, Inc., Nashville, TN (1996-present): a *physicians' management corporation.*
Board of Directors, Focus on the Family (1993-present)

12. **Memberships:** List all memberships and offices held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

Board Member, Virginia Children's Education Foundation
Advisory Board Member, Center for Jewish and Christian Values
Advisory Board Member, Women to the World International
Advisory Board Member, Susan B. Anthony List (1997-present)
Honorary Finance Chairman, Network of Politically Active Christian Women, 1996
Board of Directors, Young Life International (1991-1993)
Board of Directors, Fellowship of Christian Athletes (1991-1993)
Member, The Federalist Society (1997-present)
Member, National Association of Scholars (1997-1999)
Member, National Association of Political Consultants (1997-2000)
Member, Executive Women in Government

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

Secretary, Republican National Convention 1996
Delegate, Republican National Conventions, 1996, 2000
Platform Committee, Republican National Convention, 1996
Delegate, Virginia State Conventions, 1996, 2000 & 2001

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Speaker, Republican National Committee Black History Month Event, 2001
Bush-Cheney Transition Team, 2000-2001
Speaker, Ed Schrock for Congress Campaign, 2000
Delegate, Virginia State Conventions, 1996, 2000 & 2001
Honorary Advisory Board Member, Good Neighborhood Partnership Fund, Republican National Convention, Senator Rick Santorum, Philadelphia, 2000
Delegate, Republican National Conventions, 1996, 2000
Speaker, Rocky Mountain Republican Leadership Forum, 2000
Surrogate Speaker/Media Representative, George Bush for President Campaign, 2000
Grassroots and Volunteer Organizer, George W. Bush Virginia primary campaign 2000
Speaker, VA Beach Republican Women's Group, 2000
Steering Committee, Allen for Senate 2000
Fundraiser Co-host, George Allen for Senate, 1999
Surrogate Speaker and Volunteer, George Allen for U.S. Senate, 2000
Speaker, Eagle Forum, Pittsburgh, 2000
Surrogate Speaker and Media Representative, George Bush for President Virginia Primary Campaign, 2000
Nominating Speech/Endorser, Jennifer Byler for National Committeewoman, VA Republican Convention, 1996, 2000
Delegate, Virginia 4th Congressional District Convention 1996, 2000

Volunteer, Virginia Republican Party, Election Day Get out the Vote Effort, 1999
Host Committee and Guest Speaker, Randy Forbes for VA Senate, Special Election, 1998
Speaker, Demaris Miller for Congress, 1998
Co-Chair, Speaker and Endorser, Coleman Andrews for Lt. Governor, 1997
Quotation for Brochure, Jay Katzen for Lieutenant Governor, 1997
Speaker, Mark Earley for Attorney General, 1997
Co-Chair, Jim Gilmore for Governor Campaign, 1997
Endorsement, Pete Duda for Chesapeake City Council, 1998
Gilmore Transition Team, 1997-1998
Endorsement Quote, Jerry Kilgore for Attorney General, 1997
Endorsement, Paul Harris for House of Delegates, 1997
GOP Response Team, Democratic National Convention, 1996
Surrogate speaker, Dole/Kemp '96
Secretary, Republican National Convention 1996
Speaker, Delaware Federation of Republican Women, 1996
Surrogate Fundraiser, Ray Clatworthy for U.S. Senate, 1996
Honorary Committee, Morton Blackwell for National Committeeman, 1996
Mistress of Ceremonies, Dole for President Rally, Norfolk, Va., 1996
Platform Committee, 1996 Republican National Convention
Speaker, Virginia Beach Republican Party, 1996, 1998
Endorsement Letter, John Tate for Congress, 1996
Endorsement, Dave Hummel for VA 2nd District GOP District Chairman, 1996, 1998
Speaker, Hampton Lincoln Day Dinner, 1996
Policy Presentation, Virginia Republican House Caucus, 1995
Speaker, Virginia Republican Advance, 1995
Speaker, Tusk and Trunk Club of Virginia Beach, Virginia, 1995
Endorsement Quotation for Brochure, Jay Katzen for House of Delegates, 1995
Speaker, Seventh District Women's Conference & Congressman Tom Bliley, 1995
Speaker, Newell Falkenburg for Virginia House of Delegates, 1995
Speaker, T.W. Taylor for Virginia House of Delegates, 1995
Speaker, Joe Mann for House of Delegates, 1995
Speaker, Preston Bryant for Virginia House of Delegates, 1995
Speaker, Larry Roach for Virginia House of Delegates, 1995
Honorary Co-Host, Bob McDonnell for House of Delegates, 1995, 1997, 1999
Endorsement, Kirk Cox for House of Delegates, 1995, 1997
Policy Briefings, Virginia Republican Legislative Leaders, 1994, 1995
Speaker, Virginia Republican Legislative Caucus, 1995 (3 events)
Minority Outreach Project, VA Republican Party, 1995
Strategy Briefing, Republican Legislative Caucus, 1995
Speaker, Spotsylvania/Orange County Republican Women's Committee, 1995
Speaker, Republican Black Caucus Event, 1995
Honorary Co-Host and Speaker, Trixie Averill for House of Delegates, 1995 (2 events)
Speaker, Republican Party of Virginia Mid-Year Conference, 1995
Honorary Co-Host and Speaker, Debra Quisenberry for VA House of Delegates, 1995
Speaker, Fairfax County Republican Party, 1995
Speaker, Chesterfield County Republican Party, 1995
Speaker, Hanover County Republican Party, 1995
Honorary Host Committee and Guest Speaker, Ed Robb for Virginia State Senate, 1995
Honorary Host Committee and Guest Speaker, Marty Williams for Virginia Senate, 1995
Honorary Host Committee/Guest Speaker, Sandy Bourne for House of Delegates, 1995
Honorary Host Committee/Guest Speaker, Russ Moulton for House of Delegates, 1995
Speaker, Arlington County Republican Party, 1995
Speaker, Anthony Moore for Virginia House of Delegates, 1995
Speaker, Steve Landrith for Virginia House of Delegates, 1995
Honorary Committee/Guest Speaker, Roger McClure for VA House of Delegates, 1995
Speaker, Steve Martin for Virginia State Senate, 1995
Speaker, Bob Goodlatte for Congress, 1995
Speaker, Oliver North for United States Senate, General Election, 1994

Endorser/ Speaker, James Miller for U.S. Senate, Primary Campaign, 1994
Honorary Host Committee and Speaker, Tom Davis for Congress, 1994
Honorary Host Committee and Speaker, George Landrith for House of Delegates, 1994
Speaker, VA Federation of Republican Women, 1994
Honorary Host Committee and Speaker, George Sweet for Congress, 1994
Honorary Host Committee and Speaker, Sam Nixon for VA House of Delegates, 1994
Honorary Host Committee and Speaker, Senator Steve Martin for Virginia Senate, 1994
Honorary Host Committee and Speaker, Senator Brandon Bell for Virginia Senate, 1994
Honorary Host Committee/Speaker, Vance Wilkins for VA House of Delegates, 1994
Speaker, Delegate Jay O'Brien for Virginia House of Delegates, 1994
Allen Transition Team, 1993-1994
Host, fundraiser, Mike Farris for Lieutenant Governor, 1993
Surrogate speaker, Bush-Quayle '92
Women's Coalition for Bush-Quayle 1992
Co-Chair (with Charles James), The Family Coalition for Bush-Quayle 1992
Bush-Quayle '88 Transition Team
Speaker, Republican National Conventions, 1988, 1992, 1996

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 5 years.

George Allen for Senate	$2,000
Bush-Cheney	$1,000
Del. Bob McDonnell	$1,000
Ed Schrock for Congress	$ 500
Republican National Committee	$ 200

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

Honorary Juris Doctor, King College, Bristol, Tennessee, 1990
Honorary Doctor of Humane Letters, Roberts Wesleyan College, Rochester, New York, 1991
Honorary Doctor of Public Service, Geneva College, Beaver Falls, Pennsylvania, 1993
Honorary Doctor of Laws, Judson College, Illinois, 1994
Honorary Doctor of Laws, Azusa-Pacific University, 1999
Dominion Power Corporation's Outstanding Leadership Award, 2000
Frederick Douglass Award of Excellence, CURE, 2000
Vanguard of Faith Award, Religious Heritage Foundation, 2000
National Center of Christians and Jews, Humanitarian Award, 1998
20 Most Influential Black Conservatives, Headway Magazine, 1997 & 1998
20 Most Fascinating Women in Politics, GEORGE Magazine, 1997
William Wilberforce Award, Prison Fellowship, 1996
Outstanding Professional Woman of Hampton Roads, 1996
Family, Faith and Freedom Award, Family Research Council, 1996
The Esther Award, SisterCare, 1995
Northampton County Board of Supervisors PRIDE Award, 1995
National Association of Black Procurement Professionals, Richmond Metro Chapter, 1995
Norfolk State University Presidential Citation, 1994
National Women's History Month 1994 Award, AARP Richmond, 1994
Outstanding Alumnus Award, Hampton University, 1994
Mayor's Key to the City of Portsmouth, VA, 1994
Publius Award for Public Service, The University of Virginia, 1993
Secretary's Recognition Award, U.S. Department of Health and Human Services, 1990
International Women in Leadership, Christian Excellence Award, 1989
Secretary's Commendation, U.S. Department of Health and Human Services, 1989
YMCA of Washington, 1st Annual National Capitol Area Black Achievers Award, 1986

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

Transforming America: From the Inside Out, Zondervan Publishers, 1995
Never Forget, Zondervan Publishers, 1993
"The End Game," *The Washington Times*, 11/06/00
Comments on GAO Report on Convenience Gambling, 10/12/00
"Citizenship: It's Everyone's Responsibility," *Spirit of Citizenship & Democracy* (Ohio), 2000
"Should Limits Be Placed on Legal Gambling in Minnesota? You Betcha!" American Experiment Quarterly, Spring 2000
Comments on GAO Report on Economic & Social Impacts of Gambling, 2/14/00
"Compassion Doesn't Compromise," The Washington Post, 10/05/97
"Curing Cultural AIDS," Excellence Magazine, Summer 1997
"Welfare Reform: True compassion is not more government," The Virginian Pilot, 7/31/97
"It Takes a Family," Leader to Leader Magazine, Covenant Theological Seminary, Jan/Feb 1997
"How Government Can Repair the Family: Do No Harm," Policy Review, Sept/Oct 1996
"The America We Seek," National Review, 3/25/96
"Transforming America," *Imprimis*, February 1996
"Private Solutions: The Best Hope for Cultural Renewal," Acton Institute, Jan/Feb 1996
"How Virginia is Releasing Government from the Parent Trap," Impact Magazine, Fall 1995
"Welfare Reform: A State Perspective," Virginia Town and City, July 1995
"Virginia GOP Erred in Writing Off the Black Vote, *The Richmond Times Dispatch*, 11/15/94
"Health Care: Virginia is Doing Better," *The Washington Post*, 06/15/94
"Looking into the Mirror?" *Urban Family*, Winter 1994
Interview, Virginia Hospital Quarterly, March/Apr 1994
"For Such a Times as This," Charisma, December 1993
"Women Must Be Responsible," Response to article "Cultural Assault," Policy Review, Winter 1993
"'Walking Around Money' Hurts the GOP's Message," Richmond Times Dispatch, 11/22/93
"Destructive Themes in Rap Music Reveal a Lack of Hope," *National Minority Politics*, Oct 1993
"Dr. Elders is a Rude Wake-Up Call," Richmond Times Dispatch, 9/14/93
"Hijacking the Freedom Train," National *Minority Politics*, August 1993
"Elders Is Wrong Choice for Surgeon General," *USA Today*, 07/14/93
"End to Politicizing the Drug War," *The Washington Times*, 06/14/93
"Why I Speak for Life," Good News, 1993
"Crossing the Line," Moody Magazine, March 1992
"American Marriage," with Charles James, *Marriage Partnerships*, Summer 1991
"The Value of One Person," *Decision Magazine*, May 1991
"Kitchen Tables and White House Banquets," *The Wesleyan Woman*, Winter 1990
"We Work to Protect Human Life," Interview in USA Today, 1/22/88
"Enlisting Blacks in the Battle Against Abortion," Christianity Today, 10/02/87

Materials sent under separate cover.

16. **Speeches:** Provide the Committee with four copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

Materials sent under separate cover.

17. **Selection:**

(a) Do you know why you were chosen for this nomination by the President?

I hope that I was nominated for this position by President Bush because he has confidence in my leadership and management skills, my long-standing commitment to excellence, fairness and competitiveness in the public sector, and my willingness to help accomplish his goals.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I have had the opportunity to manage large bureaucracies and budgets in positions in the private sector and at both the federal and state levels. In these positions, I have demonstrated competence, leadership, an ability to quickly grasp and manage complex issues and a knowledge of human resource systems.

I have also been involved in issues which require bringing diverse groups and viewpoints to the table to accomplish change. In each of these situations, I have built consensus by ensuring that the process was open and objective, as well as fair and balanced for all participants.

In addition, I am familiar with many of the issues confronting the federal workforce today, including long-term care and health care, recruitment and retention of qualified employees and training.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

   Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

   No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

   No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

   No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

   Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

   a) I maintain two retirement accounts established with Fidelity Investment into which previous employers contributed while I was employed by them. All payments by employer will cease upon termination.

b) Pursuant to a book contract negotiated in 2000, I will receive two additional advance payments (in June or July) for a work on marriage I completed prior to my appointment and royalties for this work when published. Royalties are within the normal business standard for a work of this type.

c) I have a nominal amount of stock in PhyCor (valued at less than $5,000) and stock options in AmeriGroup. Both arrangements were addressed by the Office of Government Ethics.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

I signed an ethics agreement directed to the Office of Personnel Management's Designated Agency Ethics Official on May 1, 2001. In that agreement, I described steps I intend to take to avoid any actual or apparent conflict of interest in the event that I am confirmed. I currently own stock options, both vested and non-vested in a company in which I serve on the Board of Directors, AmeriGroup, Inc. If AmeriGroup goes public before these stock options terminate, I may exercise the options, in which case I have agreed to divest the holdings within 90 days of my confirmation. Until these divestitures have been completed, I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on this entity, unless I first obtain a written waiver or qualify for a regulatory exemption.

In addition, I own common stock in PhyCor, Inc. It was determined by the ethics officials that it was unnecessary for me to divest these holdings or recuse myself from matters affecting this company since the aggregate market value of the holdings does not exceed $5,000.

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

If I am confirmed, I have agreed in the ethics agreement to resign my position as Senior Fellow at the Heritage Foundation. Furthermore, for one year after I terminate my position with the Heritage Foundation, I will not participate in any particular matter involving specific parties in which the Heritage Foundation is a party or represents a party, unless I am authorized to participate. In addition, although I may continue to voluntarily participate in the Heritage Foundation's retirement plan, the Heritage Foundation's contribution will cease upon my resignation.

I will resign my positions on the Boards of Directors of the following for-profit organizations: PhyCor, Inc. and AmeriGroup, Inc., as well as the Boards of Focus on the Family and any other non-profit organizations on which I serve. Furthermore, for one year after I terminate these positions, I will not participate in any particular matter involving specific parties in which any one of these organizations is a party or represents a party, unless I am authorized to participate.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

I have not lobbied Congress, nor represented any clients in an effort to do so. For the past twenty years, I have been involved in the development and implementation of public policy. This has included roles in non-profit organizations and in the public sector (see answers to questions 9 through 13). In the public sector, I was involved in a number of issues relevant to the positions I held. In the private sector, I have been involved in educational efforts consistent with the rules and regulations governing non-profit organizations.

The subjects in which I have been involved, in both public and private sector roles, includes the following: health care; welfare; Social Security; gambling; drug abuse; child care and other social services; mental health; long-term care; education; federalism; politics; disabilities; volunteerism and mentoring; affirmative action; children and citizenship.

In addition, I have testified before state legislative and congressional committees. The latter included testimony in support of or opposition to a presidential nominee or legislative proposal. I testified at the confirmation hearings for John Ashcroft (2001) and Ruth Bader Ginsburg (1993), as well as on the following subjects:

- Medicaid Reform, Health & Environment Subcommittee, U.S. House Energy & Commerce Committee, 7/26/95;
- Parental Rights & Responsibilities Act, Oversight & Courts Subcommittee, Senate Judiciary Committee, 1995; and,
- Written testimony to Senate Committee on Commerce, Science and Transportation on amateur sports wagering and internet gambling.

I have commented on a number of GAO reports, including:

- *Convenience Gambling: Information on Economic & Social Effects in Selected Locations*, 10/12/00;
- *Impact of Gambling: Economic Effects More Measurable than Social Effects*, 2/14/00; and,
- *National Gambling Impact Study Commission: Selected Operational Practices*, 4/99

Guest Speaker, Committee Against Lottery Legalization (CALL), Alabama, 1999
Served as an expert speaker on the effects of legalized gambling during a one day series of press conferences organized by grassroots interests opposed to the legalization of a state lottery in Alabama

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide copies of any trust or other agreements.)

I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any person whose interests are imputed to me, unless I first obtain a written waiver, or qualify for a regulatory exemption. I understand that the interests of the following persons are imputed to me: my spouse, minor children or any general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment. I will seek the advice of ethics officials before undertaking any action which presents a potential conflict of interest.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No.

2. Have you ever been investigated, arrested, charged or held by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

Not to my knowledge.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

No involvement in any proceeding in an individual capacity. While serving in state government, I was involved in a number of actions taken against the Governor and the Commonwealth of Virginia.

Kirkland v. Allen — Type: EEO
Summary: Suit brought by employee terminated by the Governor, alleging the act was unconstitutional and that he was denied due process.
Case settled. Closed: April 1995.

Mandel v. Allen — Type: EEO
Summary: Action brought by former state employees who allege they were unconstitutionally terminated without due process.
Summary judgment to defendants. On appeal. Court of Appeals affirmed.
Closed: August 1996.

Fullen v. Dept. of Social Services — Type: EEO
Summary: Title VII (racial discrimination) and state law claims.
Special Counsel appointed. Case settled.
Closed: May 1997

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?

No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

E. FINANCIAL DATA

The answers to the financial portion of this questionnaire are available for inspection in the offices of the Senate Governmental Affairs Committee.

AFFIDAVIT

Kay Coles James, being duly sworn, hereby states that she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of her knowledge, current, accurate, and complete.

Subscribed and sworn before me this 9th day of May, 2001

Notary Public
BOBBIE JEAN WILLIAMS
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires October 14, 2001

Pre-hearing Questionnaire for the Nomination of Kay Coles James to be Director, Office of Personnel Management

I. Nomination Process and Conflicts of Interest

1. **Why do you believe the President nominated you to serve as Director of the Office of Personnel Management (OPM)?**

   I hope that I was nominated for this position by President Bush because he has confidence in my leadership and management skills, my long-standing commitment to excellence, fairness and competitiveness in the public sector, and my willingness to help accomplish his goals.

2. **Were any conditions, expressed or implied, attached to your nomination? If so, please explain.**

   No.

3. **What specific background and experience affirmatively qualifies you to be Director of OPM? Please describe your background and experience in relation to OPM's role.**

   I have had the opportunity to manage large bureaucracies and budgets in positions in the private sector and at both the federal and state levels. In these positions, I have demonstrated competence, leadership, an ability to quickly grasp and manage complex issues and a knowledge of human resource systems.

   I have also been involved in issues which require bringing diverse groups and viewpoints to the table to accomplish change. In each of these situations, I have built consensus by ensuring that the process was open and objective, as well as fair and balanced for all participants.

   In addition, I am familiar with many of the issues confronting the federal workforce today, including long-term care and health care, recruitment and retention of qualified employees and training.

4. **Have you made any commitments with respect to the policies and principles you will attempt to implement as Director of OPM? If so, what are they and to whom have the commitments been made?**

   I have made no commitments regarding policies I will attempt to implement if confirmed. I have spoken with officials of most of the groups that represent federal employees, both labor and management. To each of these individuals, I have pledged that I will work in an open, forthright and collegial manner and that I will strive to ensure that each of these groups is represented in any decision making process.

5. **If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.**

No.

II. Role and Responsibilities of the Director of OPM

1. **How do you view the role of Director of OPM?**

The Director of the Office of Personnel Management is a position critical to the success of the strategic and daily operations of the federal government. The responsibilities range from ensuring the integrity of the merit system, timely and accurate provision of insurance and retirement benefits for active and retired federal workers, the oversight of investigative work performed to determine suitability for federal employment and the effective hiring, development and retention of the federal workforce.

I view the role of the Director as a key advisor to the President for concerns related to the federal workforce and federal personnel systems. Within the Executive Branch, the Director should serve as an advocate for strategic and interim concerns related to the federal workforce during both the policy development and subsequent budget development processes.

2. **What challenges currently face OPM? How will you as Director address these challenges and what will be your top priorities?**

I am fortunate to have been nominated to lead an agency that, based on my personal observations and those of my predecessors, is recognized for its dynamic and service oriented work environment. Although the organizational culture is forward-looking and positive, OPM is faced with multiple challenges as an agency and the agency itself represents a microcosm of what is occurring throughout the federal government. Several senior career management positions are currently vacant or will become vacant in the next several months. Recruiting and filling these positions represents a critical need for the agency. The agency also has a very high number of employees who, after years of dedicated service, are nearing retirement eligibility. OPM, like most federal agencies, must prepare now to attract future employees with the education, skills and interest in serving their fellow citizens.

Overall, my external and internal goals are consistent with the priorities and principles of President Bush. I am dedicated to restoring the image long associated with federal service, namely, that it is a noble and rewarding occupation. I understand that this will be a challenge, but I firmly believe that confidence in the federal government is rooted in the level of respect the nation extends to those who work for our fellow citizens. I am committed to encouraging citizens to consider federal service as a duty, honor and

appropriate avenue for fulfilling their citizenship obligations. As we seek to capture the interests of this generation, I believe that we must harness technology to make the application and hiring process easier and develop more flexibility to make the compensation packages more competitive. Finally, I am committed to developing incentives necessary to retain experienced and high-performing workers and to prevent further brain drain from the federal workforce, and I am committed to ensuring that our policies and programs are truly responsive to the diverse and complex needs of today's government.

As Director, my immediate internal priorities will include the recruitment and hiring of talented professionals to fill existing vacancies. I will also perform an assessment on how well the agency is performing in terms of its duty to service federal worker and retiree insurance and retirement claims. I will review agency efforts to satisfy other requests from customers within the federal government, including congressional offices. Finally, I will also work diligently to identify new sources for potential future employees for the agency.

3. How do you plan to communicate to Congress on your efforts to address OPM issues?

I know that there are a number of mechanisms, including regular Committee hearings and reports to Congress, that are used to communicate between the Congress and the Executive Branch. In addition to these, I will work closely with this Committee, other Members of the Senate and their staff to ensure that the perspective, concerns and priorities of Congress are incorporated into deliberations regarding the federal workforce.

4. How do you plan to communicate to OPM staff on efforts to address OPM issues?

Through discussions with OPM staff and five previous OPM directors, I am somewhat aware of the traditional mechanisms for communicating with OPM staff, including staff meetings, conferences, newsletters, the Internet and the media. My own style is to be open and forthright with all employees and to incorporate as many collaborators as possible into the decision-making process. I have met most of the senior staff at OPM and look forward to meeting as many of the agency's employees as possible. I am committed to using whatever means are most effective to communicate with OPM staff.

III. Policy Issues

1. **GAO has recently identified strategic human capital management as a new government wide high-risk area, saying that today's federal human capital strategies are not appropriately constituted to adequately meet current and emerging taxpayer needs in the most effective, efficient, and economical manner possible. In doing so, GAO not only acknowledged actions OPM has taken to foster a more results-oriented approach to strategic human capital management across government, but also stressed the important role it should continue to play in promoting human capital improvements. In testimony before the Governmental Affairs Committee, Comptroller General David Walker indicated that "90 per cent of what needs to be done [to address human capital] can be done within the context of current law." What actions do you think OPM should take to improve human capital management government wide?**

As you are aware, the Director of OPM is the President's agent for federal human resource management leadership (this authority is delegated from the President to the Director, in 5 U.S.C. 1104). But leadership in this critical area clearly is shared by all of the President's appointees, and particularly by the Director of OMB, and by the Congress. I am impressed by the public hearings that the Committee has held in the past year to highlight this important challenge. I was also delighted to have been able to talk with many of you in recent weeks about possible next steps that should be taken to ensure that each agency has the workforce it needs to deliver on the President's promise to create a government that is more citizen centered, results-oriented, efficient and effective. If I am confirmed as Director, I look forward to working with my colleagues in the Administration and with this Committee and others in Congress to identify changes that may be needed in the systems and statutes that guide federal human capital management.

Although I would be reluctant to be as quantitative as the Comptroller General given the limited information currently available to me, I would surely endorse his suggestion that much can be done to improve the government-wide management of human capital within the existing statutory framework. The integration of human resource management objectives into an agency's strategic plan is the first step in the process. I understand that OPM has been working with agencies through the Human Resources Management Council to achieve that result.

Beyond that, as the President's budget clearly states, there is much in the private sector we can emulate administratively. From bringing government closer to the people we serve by flattening the hierarchy, to reducing the number of layers in the upper echelon of the government, agencies can take actions that will transform their old-style organizations into more entrepreneurial ones. I am advised that OPM is already actively engaged in using work force planning to help agencies redistribute positions from higher levels to the front-line service delivery activities that interact directly with citizens.

2. **During the 1990s, OPM was downsized, its budget was reduced, and--through delegation and deregulation--its role and mission changed. With today's continued emphasis on human capital flexibilities, OPM's role is likely to continue to evolve.**

What do you see as OPM's role in the future vis-à-vis agencies and their continuing desires for flexibility in human capital management? What do you foresee regarding restructuring of the OPM workforce?

I would expect continued evolution in the relationship between OPM and other agencies as we work together to meet the challenges of human resource management in the coming years. However, until I've had an opportunity to experience the current operation of the agency, any discussion of restructuring would be not only premature but also potentially disruptive. As I understand it, like other agencies, OPM is conducting an analysis of its workforce to determine its strengths and its needs. When that review has been completed, the Administration will be better able to proceed with any necessary changes for all agencies, including OPM.

3. **The Office of Personnel Management revised its Strategic Plan, prepared in accordance with the Government Performance and Results Act, on September 30, 2000. The Plan sets out four goals: to lead agencies in shaping human resource policy, to protect merit principles in managing the federal workforce, to provide high-quality services to meet the needs of OPM's customers, and to safeguard the employee benefit trust funds. Do you agree that these are the appropriate strategic goals for OPM? Will you implement the Plan as currently drafted? If not, what changes do you think are needed?**

I believe the Results Act is one of the most important tools we have at our hands to improve the management of government. I am familiar with OPM's Strategic Plan and believe it provides a good description of the primary responsibilities given by law to OPM and the major challenges for human capital management, as well as a number of excellent long term objectives.

However, I agree with most experts in strategic planning who recognize that strategic plans are living documents, that can – and must – be changed to ensure they address the constantly changing challenges reflected in an ever changing environment, and that they reflect/incorporate the most up-to-date strategies suggested by top leadership. For this reason, if I am confirmed as Director, I will make one of my first priorities an immediate review of the Strategic Plan to ensure it reflects the management agenda that the President has laid before us, and that it addresses the critical government-wide human capital challenge in the most effective and immediate way possible. I will do this with the assistance of my top political and career executives, so that I can draw on fresh thinking and experience to set OPM on a course that will address the government's critical human capital needs. I will look forward to working with you, and the broad array of stakeholders who have helped to shape the previous plans, as I do this.

4. **Many factors, such as age, attrition rates, diversity, and skills imbalances, affect the retention and success of a workforce. Describe your experience in evaluating such workforce factors to identify the most challenging human capital issues. How do you propose you will deal with these issues in both your agency and the federal**

government over the next several years? Please describe for the Committee your experience in managing personnel.

As an experienced manager, I know that the evaluation of workforce factors as outlined above is a necessary, basic and ongoing function that is critical to the long-term success of any organization. In the case of federal and state workforces, these issues are especially important given the essential services and functions delivered or performed for citizens each day.

In each of the professional capacities I have served, I have been responsible for developing strategic plans to outline future organizational goals and missions. Central to each successful plan was an accurate assessment of current strengths and weaknesses and future needs -- especially those related to short-term and long-term personnel levels and functions. In order to successfully fulfill the management duties previously assigned to me, I was directly involved in the development and utilization of the assessment tools necessary to isolate and quantify factors such as attrition and retention rates, skill imbalances, age and diversity.

As an example, in Virginia, prior to the passage of our 1995 welfare reform law, I charged our state social services agencies with the responsibility of assessing skill imbalances, training deficits and key recruitments necessary for the successful implementation of future welfare reform initiatives. This represented a tremendous undertaking and was performed with a very high degree of professionalism by the career agency staff. I reviewed the results of the study and directed my senior staff to immediately redirect funds to retrain case workers, seek targeted exemptions from a state hiring freeze to recruit new personnel and to delegate greater authority to line managers and workers to increase their overall job satisfaction and opportunities for problem-solving. Through these changes, our team was able to prepare and build a state welfare agency workforce that was ready and capable of implementing welfare reform.

In terms of my plans on how to deal with these issues at the federal level, both at OPM and government-wide, I would draw on my previous experiences as well as the expertise and experiences of others in the executive branch, Congress and private sector. I believe that the strategic objectives outlined by the President, and the issues that have been highlighted in Congress in regard to human capital, provide sufficient insight regarding what the federal workforce should look like over the next five to ten years and well into the future. The challenges outlined by this Committee will require my full attention as we seek to train and retain quality workers, identify new recruits and foster more interest for public service among minorities.

In terms of my professional career, successively higher levels of responsibility for personnel policies and recruitment have marked my management experience within the private, non-profit and public sectors. At the start of my professional career, I had the opportunity to work for very well organized corporations that provided me with excellent management training opportunities. Through these organizations, I received intensive training in personnel procedures related to fair hiring practices, employee performance reporting and standard recruitment, retention and termination procedures. As a manager

in the non-profit sector, I had several additional opportunities to increase my personnel skills, including the development of the personnel policies and procedures for One-to-One Partnership.

In the public sector, my personnel management experiences, involving both civil service and political appointees, began at the Department of Health and Human Services starting in 1989. During my time at the Department of Health and Human Services, I managed a public affairs team as the Assistant Secretary for Public Affairs. I later managed a smaller number of appointees and career staff as the Associate Director for State and Local Affairs at the Office of National Drug Control Policy. In 1994, I was selected by then Virginia Governor George Allen to serve as the Secretary of Heath and Human Resources for the Commonwealth of Virginia. Upon my confirmation by the Virginia General Assembly, I assumed responsibility for the management and policies affecting over 19,000 full-time career employees and thousands of part-time workers.

5. **The Government Performance and Results Act envisions that agencies will link their human capital planning with their strategic and annual plans. However, the General Accounting Office believes most agency plans do not sufficiently address how human capital will be used to achieve results. How will OPM assist agencies in integrating human capital considerations into programmatic planning? To what extent, if any, do you believe that federal employees' pay should be more closely tied to their agencies' strategic and annual performance goals, and why?**

I agree that the Results Act is an excellent vehicle for raising the level of attention that is paid to human capital management issues by line executives in agencies, not just by the human resources management executives. There is a real opportunity for OPM and OMB to work closely together to provide more guidance to agencies on how to achieve this goal, and if I am confirmed, I will look forward to doing so.

With respect to linking pay and performance goals, I believe strongly that an organization's reward systems must be aligned to support and reinforce achieving strategic goals and objectives. I understand that OPM recently established new requirements for using balanced measures of results as the basis for executive performance assessments that are linked to their performance bonuses. Such linkages could cascade further down into an organization. However, I am also concerned that some features of the current compensation and performance systems for the general workforce date back to a process-focused era of government and may not support a strategic orientation very well. I understand OPM has been examining those systems. I will be very interested to hear about ideas they have for improving how pay can support results.

6. **The Administration has announced its intention to "flatten the Federal hierarchy [and] reduce the number of layers in the upper echelon of government." During the campaign, President Bush advocated flattening the federal hierarchy by not replacing 40,000 senior and middle managers who will retire over the next eight**

years. To carry out this promise, the Office of Management and Budget directed agencies in February to set specific goals in their 2002 annual performance plans to "delayer management levels to streamline [their] organizations." In recent reports, the General Accounting Office has urged that the government first undertake strategic workforce planning to ensure that agencies have the right mix of people and skills in place to fulfill the agency's mission. Do you agree with GAO that workforce planning is important? How will OPM itself implement this directive under your leadership?

I do agree with GAO that strategic workforce planning is the essential first step in making decisions about how agencies are organized to deliver their missions, and I note that the OMB directive to agencies includes a requirement for each agency to conduct this type of workforce analysis as part of their planning.

If I am confirmed as Director of OPM, I will ensure that OPM incorporates this kind of analysis in any agency mission and organizational planning. I also believe that my role includes being a forceful advocate within OPM and with OMB for retaining necessary positions. As a matter of principle, I do not believe that strategic workforce planning and streamlining organizations are mutually exclusive efforts.

7. **At the moment, we seem to be at a crossroad regarding compensation policy for federal employees. Many employee organizations have been critical of the failure to implement fully the current law regarding locality pay adjustments, while others have questioned the reliability of surveys measuring the effects of locality pay. What familiarity do you have with the studies that have been ongoing regarding compensation policy? If you were given the opportunity of a blank slate, provide a general outline of what the federal pay scale would look like. How would both white collar and blue collar pay be determined? To what extent do you feel an agency or department should have the authority to determine its own pay system? With regard to such an agency/department prerogative, how much oversight do you feel OPM should maintain?**

I am aware that OPM has been looking carefully at compensation issues and options. I understand they are paying particular attention to compensation practices in the private sector and sharing their findings with stakeholders. I am eager to get more in-depth information about what their work has surfaced. It would be premature to speculate about what should be written on that blank slate. However, I do believe it is important to look at compensation in ways that go beyond setting and adjusting pay scales. We need to consider deeper issues like the way the government values work under its classification system. That system has come under a lot of criticism over the years, and I understand OPM is taking a close look at it.

With respect to the question of agencies having their own authority to determine their pay systems, I believe we must be willing to consider giving agencies more opportunities to use pay strategically. Such flexibility could be achieved in many different ways, and any alternative should include an OPM leadership, assistance, and oversight role. Clearly,

agencies must be held accountable for how they exercise any discretion they might have. Any changes must be viewed in terms of the impact upon the overall federal workforce, as well as to the specific agencies involved.

8. **About half of OPM's staff administer benefit programs (primarily the federal retirement programs), another quarter provide services to agencies on a reimbursable basis, and the remainder perform work paid for through appropriated funds. OPM no longer has the investigation and training functions that it used to have. In order to more efficiently and effectively carry out its mission and accomplish the tasks OPM has established as priorities, what, if any, need is there to reallocate resources within OPM or to contract out additional programs or services?**

As I mentioned earlier, it is my understanding that OPM is currently performing an analysis of its current responsibilities and workforce to inventory the skills of current employees and to identify any deficits. Upon completion of that exercise, OPM will be able not only to assess its staffing needs in light of its present role but also to make any adjustments necessary to address new or altered objectives. I believe it would be inappropriate to speculate on the composition of the workforce before that study is completed.

The cafeteria philosophy is intended to offer a retention strategy that tailors an employee's benefits plan to the individual and advocates argue that it allows opportunity, flexibility, and increased availability of health care and other benefit options. Designing a system to allow trade-offs among health insurance, life insurance, and other benefits raises questions about what benefits to include, how to link them, how to allocate employee credits, and how to administer and finance the system. Would you give us your insight on the cafeteria benefits plan as opposed to a more structured program? What has been your experience with the cafeteria benefits plan in the private sector?

The term "cafeteria plan" is often used to describe a menu of benefits from which employees may choose. Employers frequently will make a contribution toward the cost of those benefits. Cafeteria-style benefits are popular with many employers and employees because they allow employees to tailor a benefits package that meets their needs and concerns, and they can be tailored as those needs change. OPM's adoption of health insurance premium conversion in 2000 was a step in that same direction.

While I have not come to any conclusions about what the federal government should do in this area, I do believe we need to consider programs such as these because they affect our competitiveness as an employer. As we consider the changes that may be needed in our overall compensation program, cafeteria plans should be seriously considered. As Director, I will ensure that reasonable alternatives are studied carefully evaluated before proposing them.

In the case of work/life programs, a cafeteria philosophy could encompass child care or elder care, dependent care services, employee health and fitness center memberships, and the like. These work life programs allow employees to carefully balance not only their work demands, but also their personal and family needs as well, and enable the federal government to successfully meet the challenges of managing the workforce of the 21st Century.

10. **The increase in human capital flexibilities across the government raises the issue of oversight of the merit system. What role do you see OPM playing in ensuring that civil service laws and policies are complied with by agencies that, in many cases, are seeking more exemptions from those rules and regulations, and what mechanisms do you envision using to hold agencies accountable?**

Primary to OPM's mission is the responsibility to assure that the values of our American merit system are observed. In the current environment where many agencies are seeking variations from traditional civil service practices, it is important to go back to our core merit system values and assess whether those core values are embodied in agency practices. Regular oversight of agency human resource management (HRM) practices is one mechanism in the effort to hold agencies accountable. Another mechanism involves encouraging agencies to develop their own accountability systems and providing them with technical assistance in doing this. If I am confirmed as Director, I will ensure that OPM has such mechanisms to hold agencies accountable to the civil service core values whether the specific agency is exempt from or bound by the traditional civil service system.

The OPM staff has explained to me that the statutory merit system principles provide the core values of the civil service, and OPM uses those basic principles to evaluate agency HRM systems. Executive Order 13197, signed last January, clarifies and strengthens OPM's authority to hold Executive agencies accountable for fair and effective HRM. The order authorizes OPM to review HRM in any agency covered by the merit principles, including agencies that are exempt from traditional civil service laws, but excluding intelligence agencies and government corporations.

OPM staff has indicated that they review both types of agencies (those with traditional and exempt systems) on a cyclic basis every four or five years. Beyond its cyclic reviews, OPM staff tell me they conduct specific problem reviews whenever such intervention is warranted. In addition to these onsite cyclical and problem-oriented reviews, OPM holds agencies accountable for fair and effective HRM through employee initiated appeal processes such as those covering position classification and the Fair Labor Standards Act.

OPM staff also explained that they work with agencies to help them develop internal HRM accountability systems. With agency involvement, OPM tells me they have and will continue to develop guides so that top management, line managers, and HR staff can gauge how effectively they are using their human resources within the values of the merit system principles.

11. **GAO has noted that strategic human capital management is the "missing link" in the federal statutory framework for results-oriented management. What legislative changes, if any, do you believe are needed to improve the federal government's human capital management?**

Providing program managers with new and expanded tools for workforce restructuring may require legislative changes. Additionally, budgeting for results will be possible only if employee benefit costs are appropriately attributed to agencies. The President's Budget calls for legislation to make that accountability possible. Beyond those measures, I would want to review with agencies the types of changes OPM could propose that would enable them to achieve the Administration's goals.

12. **President Bush recently issued an executive order dissolving the labor-management partnership council created by President Clinton in 1993. What do you see as OPM's future role in achieving the goal of improved labor-management relations in the government following President Bush's order dissolving the partnerships? While President Bush's order did not revoke collective bargaining agreements already in place, how will the new mandate affect future federal labor-management relations? What will you do to foster good labor-management relations in the Federal Government, especially in agencies that do not currently have good relationships between labor and management?**

Under my leadership, OPM would take a strong and active role in the federal government's labor-management relations program. OPM can promote the importance of good working relationships between federal agencies and their unions. We can provide assistance and training to agencies and unions who want to learn how to work together more effectively. And we can highlight "best practices" in labor-management relations and help both agencies and unions identify and hone the skills they need to achieve similar results.

I believe the major impact of Executive Order 13203 is that it places responsibility for labor-management relations where it belongs: directly in the hands of agencies and their unions. President Bush's order neither prescribes nor prohibits any particular approach to labor-management relations. Agencies and their unions are free to adopt a labor relations strategy best suited to their own needs, ranging from traditional collective bargaining to interest-based problem-solving and other forms of labor-management cooperation.

What's most important is that labor and management learn how to work together. The notion that labor and management must oppose, outsmart, defeat, or ignore each other has no place in the modern workplace. As OPM Director, I would help agencies and unions work together in ways that benefit the government and the people we serve, whether they chose to work through traditional collective bargaining or more interest-based, cooperative approaches.

13. **Federal agencies, like other employers, are faced with balancing demands for**

mission accomplishment and the fair treatment of their work force. Federal employees are protected from inappropriate, arbitrary, and prohibited personnel practices, but the government's administrative redress system has been criticized *by some* as being complex, time consuming, costly, and adversarial. What role can OPM play in improving this system and in helping agencies develop conflict management systems that work to prevent as well as resolve workplace disputes? What are your views concerning the use of alternative dispute resolution methods?

I know that some perceive the existing administrative redress system to be complex, time consuming, costly, and adversarial. I also understand that this system is based mostly in law and involves a number of different administrative agencies, such as the Merit Systems Protection Board and the Equal Employment Opportunity Commission. I would be pleased to participate in any effort undertaken by the Administration to examine the existing statutory system and, as appropriate, to develop legislative proposals aimed at making the system more effective and efficient.

While I understand OPM has limited responsibility for adjudicating disputes, I believe it can play a constructive role in helping the current system work better and in promoting more widespread use of alternative dispute resolution. OPM does this now, through advice and guidance provided to federal agencies and through OPM's statutory authority to intervene in certain disputes.

As the government's central human resources agency, OPM is in a unique position to share and highlight examples of successful agency ADR programs for the resolution of workplace disputes. OPM has been a leader in promoting ADR in the federal government and will strive to remain so if I were Director.

14. **The Human Resources Management Council has announced the following goals: to provide a forum for communicating and evaluating government-wide human resources management policies and sharing best practices; to promote collaboration across agency lines and with OPM to foster policies and actions that will achieve a diverse federal workforce that is skilled, flexible, and focused on results; and to collaborate with OPM, federal agencies, and other organizations to identify and address human resources management issues. Do you agree with these goals? What do you believe should be the role of the HRMC in promoting interagency communication on personnel matters?**

We have already agreed that addressing the federal human capital challenge is of critical importance to our government, and it appears that the HRMC goals listed above align with this objective. In addition, their goals support my personal belief that collaboration and communication are always effective tools for reaching difficult objectives. If I am confirmed as Director of OPM, I will welcome this collaboration, and will appreciate the role they can play in promoting effective communication across all agencies.

15. **The OPM Director assumes the role of Chairperson of the HRMC. Currently, the**

priorities of the HRMC are emphasizing the importance of workforce planning, improving the public perception of federal employment, and creating a supportive work environment for federal employees. Do you feel these priorities reflect the primary objectives of the HRMC? If not, what tasks do you think should be addressed to enhance the HRMC's mission within the community?

These appear to be important, meaningful actions to improve federal human capital management, but I also believe that any strategic plan or set of priorities should be considered as a living document that should change if need be to reflect the changing environment. If confirmed, I will look forward to working together with the HRMC to review and evaluate these strategies, reexamine priorities and craft new strategies if they are needed.

16. **Numerous GAO reports have highlighted the need for agencies to expend more resources on effective training and professional development programs to better equip federal employees for the workplaces of the future. Based on your experience, what priority would you place on training and workplace development, and how would you emphasize continuous learning in both your agency and the federal government? Some have suggested that agencies request a line item in their appropriation to cover the costs of training and development. What are your views on this proposal?**

Training and workplace development are essential in a knowledge-based economy, and as such they are a high priority. One of OPM's statutory responsibilities is to provide government-wide training policy and guidance to assure that federal employees have the training they need to do their jobs, and meet the challenges of our rapidly changing workplace.

Worldwide, there is an increasing focus on "human capital" as a sound business investment. It is with a well-trained and highly skilled federal workforce that agencies will be able to meet the President's mandate to create a government that is citizen-centered, results oriented, and market based. It is a dedication to education that will prepare our future managers and leaders to do the same. Placing a high priority on training and workplace development is consistent with the Administration's management and performance agenda and the current congressional interest in human capital development. Not only does an emphasis on continuous learning develop a skilled workforce, it also helps attract and retain talented people and maintain the stature and value of public service. We, as leaders of one of the largest businesses in the world, should send a strong, positive message about the priority we place on learning.

As to how I would emphasize continuous learning within OPM and the federal government, the development of a 21st century workforce demands continuous learning. A better-trained workforce correlates with reduced costs, improved service, and increased customer and employee satisfaction. Continuous learning is an investment made by both an organization and an individual to achieve organizational success. As the OPM Director, I would ensure that learning is at the forefront of OPM's leadership role by

promoting the integration of human capital strategies into strategic plans and emphasizing the contributions of training to the accomplishment of agency missions. OPM can provide a leadership role to aggressively promote and underscore the value that investments in training and performance improvement can make in delivering quality products and services to the American people.

To address your question as to my view on a separate line item for training and development in appropriations, there have been recurring discussions around this issue, and as OPM Director, I will discuss this issue with agencies, consider stakeholder perspectives, and consult with key staff. I believe that a careful analysis is necessary before a definitive position can be taken.

17. **Discussion on the issue of political appointees occurs on three levels. One point of view is that to effectively pursue policy goals the president must fill key policy positions with men and women who share the same vision. Thus, a high number of political appointees is required to promote and accomplish the president's agenda. An opposing point of view argues that the high number of political appointees creates a glass ceiling within the bureaucracy that discourages many well-qualified candidates from entering, or staying in, the civil service. Additionally, the point is raised that appointees tend to be more mobile than career employees, diminishing the time they have to learn one job well before switching to another one. Past numbers have estimated an appointee turnover rate of approximately 18 months. What philosophy and numbers would you bring to the balance of political appointees? Some have suggested that we need to cap the number of political appointees at approximately 2200. Do you have a view on this proposal?**

I fundamentally believe that elected officials, presidents or governors need appointees to ensure their success in implementing the policies that the voters elected them to enact. Theoretically, appointees should possess the knowledge of the political agenda and principles upon which their principal was elected to office. They should also possess the character, work ethic, dedication and expertise necessary to communicate and effect necessary changes within the government. Part of this knowledge base should include an understanding of the important role that career executives play in the management and operations of the federal government.

My personal philosophy on this issue is relatively simple – the legitimate concerns over turnover rates or a "glass ceiling" can usually be alleviated by the initial management decisions and attitudes displayed by senior appointees. I believe managers, be they career staff or appointees, must use excellence and quality as the standards for recruiting and building their teams. Since the terms served by political appointees are governed by decisions made by elected officials and changes brought about by election cycles, turnover and higher mobility rates will always be present. However, if qualified and experienced individuals are hired at the outset, the impact of turnover can be successfully managed.

The issue of "glass ceilings" can also be managed and, to a large degree, avoided. There are important, fundamental and necessary differences between the roles played by career and appointed staff. However, effective political managers are those who actively work to create and maintain a level of trust and professional respect for career service staff. As the Director of OPM, I would encourage all appointees to respect and utilize the wisdom and experience represented by career staff. It is equally important that we encourage career staff to continue to work closely with political appointees to prevent duplication of efforts and assist the President in implementing his agenda in a timely and efficient manner.

In terms of precise numbers of political appointees, hiring targets or proposed caps, I would need to review additional information and studies on this issue before rendering a final opinion. I would be most interested in studies and reports that were authored by those who had actually served in government and who had been accountable for implementing policy. My pre-disposition is to avoid any effort which limits the ability of the executive branch, now or in the future, to adequately service requests from constituents or customers or that might limit the ability to implement policy in a timely fashion.

18. Political appointees who create and maintain constructive working relationships with Civil servants, including members of federal unions, can improve employee morale, increase performance, and lower costs. Please describe your specific experience involving "frontline" employees and how you intend to create and maintain a constructive work environment with the career civil servants.

The business of government cannot occur without the full cooperation and active participation of all parties involved in the management and delivery of services, including union and non-union career staff. Senior management should create work environments in which the wisdom and expertise of front-line workers are recognized, incorporated and rewarded.

In each opportunity I have had to serve, I have built management teams that understood the importance of earnestly listening to and incorporating the perspectives and feedback of "frontline" workers. As the Director of OPM, I would encourage my fellow appointees to foster a team environment where professional excellence is recognized and rewarded. I would further encourage my colleagues to create vibrant organizations in which career staffs are extended full respect, access and the opportunity to fully inform policy deliberations and implementation schedules.

In terms of my own experience, I would offer one example that provides insight into my own personal management style. As the Secretary of Health and Human Resources in the Commonwealth of Virginia, I was deeply committed to aggressive risk management within the many programs administered by the Secretariat. The Secretariat, through fourteen state agencies, was responsible for the administration of nearly $8.4 billion state and federal dollars. Several agencies within the Secretariat had less than stellar track records in areas of fiscal and risk management and their weaknesses posed potential

problems. In order to pro-actively address the issue, I provided the professional internal audit staffs within each of these agencies the opportunity to meet with me privately and to outline the resources they needed to better perform their duties. As a result of these meetings with career team members, I created a Council on Audit and Control comprising career staff from each of the fourteen agencies. The Council was designed to support other agencies as requested, allowing senior audit staffs to draw upon the expertise and staff resources of up to an additional fourteen career colleagues.

19. **An agency needs senior leaders who are drivers of continuous improvement in order to become a high-performance organization. What do you feel is the best approach for motivating career employees, or any employees for that matter, to achieve excellence?**

Based on my experience as a manager, there are several core principles that form the foundation for high performance agencies and which create an environment for excellence and continuous improvement. I believe that all senior employees and their subordinates, regardless of their status as political appointees or career staff, should operate under these principles.

First, senior managers are responsible for clearly articulating the goals and the sense of urgency necessary for completing the vision outlined by the principal – in this case the President, Cabinet Secretary or agency director. Second, once the goals have been established, managers must allow employees to participate in a process that determines the best action steps for meeting the agency objectives. Third, as responsibility for each item is delegated, managers must delegate a commensurate degree of authority and flexibility for completing the task without micro-managing the process. If additional training or resources are necessary, managers should work hard to secure that for employees. Fourth, high performance organizations develop systems for tracking progress and for utilizing employees as trouble-shooters and solution generators. Fifth, motivation and excellence cannot be expected from organizations that fail to continually assess, recognize and reward individual and team performance.

20. **President Bush's budget outline suggests that the Administration may be reviewing possible reforms of the Federal Employees Health Benefits Program. The outline said specific initiatives under consideration are: options to ensure that the program offers high quality and cost effective health plans; incentives to Federal employees and annuitants to choose their plans wisely; and integration of annuitant health benefits with future reforms to Medicare. Can you provide any specific details regarding these initiatives?**

The Federal Employees Health Benefits Program is an excellent program. Its premiums are comparable to other large employers. However, like other employers, premiums have been rising at unacceptable levels for the last several years. The Administration has serious concerns about these increases, which I share. The FY 2002 Budget pledges to

seek changes that will help control future premium increases while preserving the value of benefits.

We have seen other purchasers of health care leverage their purchasing power in the health care market to keep premiums affordable and encourage health plans to meet standards of accountability and quality. I think we should look at some of the successful things others have done and see if they make sense for the Federal Employees Health Benefits Program.

While I have not been briefed on the details of any of the proposals, I intend to explore them carefully and move forward with proposals that are consistent with the President's Budget. We must ensure that the Program remains contemporary, comprehensive and affordable.

21. **The Health Insurance Portability and Accountability Act of 1996 specifically excluded the federal employees health Benefits Program from its definition of "Federal Health Care Programs. This present exclusion denies the FEHBP the opportunity to use Social Security Act criminal sanctions for fraud and abuse, new grounds for mandatory exclusion from the program, and civil monetary penalties for routinely committed offenses. The FEHBP is financed with approximately 71 percent appropriated funds and is the third largest federal health care program after Medicare and Medicaid. Do you think a statutory change granting the FEHBP the ability to utilize these sanctions and penalties for fraud and abuse is warranted?**

OPM's Inspector General has provided me with a preliminary briefing on this issue. I understand that he continues to advocate the repeal of the FEHBP exclusion from the health care fraud civil remedies in the Act. There appear to be compelling reasons to support the IG's recommendation. I know that my predecessors in the previous Administration strongly supported legislation to amend the Act to remove this exclusion. I look forward to studying this issue in greater detail and to working with the Committee on potential adjustments, if warranted.

22. **Two years ago, Congress authorized federal agencies to help pay for the costs of child care for federal employees, primarily those in low-income positions. OPM issued regulations, and recently released a report on the program's progress. This program is currently scheduled to expire on September 30, 2001, but the President's budget would extend it for another year. While at least 15 agencies have set up child care tuition-assistance programs, some agencies and federal employees have reportedly been reluctant to take advantage of this program because it could be ended at any time. Do you support making this program permanent? As OPM Director, would you make any changes in the way the program currently operates under OPM rules?**

I will need to consult with OPM officials and others before finalizing my recommendations. I do believe, however, that allowing federal agencies to provide child-

care subsidies enables employees to receive needed financial assistance for one of the most costly family expenses they will incur. The child care subsidy program is consistent with what employers in the private sector are doing to help their employees. As a tool to improve recruitment, retention, morale and productivity, child care subsidies have proven to be a family-friendly initiative that is good for employers and employees alike. As for any changes I would make as to how the program currently operates, I would need to determine exactly how the program is operating to ensure the rules are applied fairly and consistently across government and that the program offers the widest array of options possible for lower income employees.

3. **A report released by GAO in April showed that, during the 1990s, the number of women and minorities in the Senior Executive Service increased slightly. GAO attributed these changes to retirements and the increased recruitment of women and minorities. According to a recent article in Government Executive, OPM's Acting Director Steven Cohen has said that, while GAO's findings reflect some progress, further improvement will require sustained attention to employment practices that foster diversity. Do you agree with Mr. Cohen's conclusions? If so, what efforts will you make, if you are confirmed as OPM Director, to continue this trend toward increased diversity in the Senior Executive Service?**

I agree with Mr. Cohen's conclusions. If confirmed as Director, I want OPM to continue providing government-wide leadership and policy direction in the selection, development and management of a diverse, highly qualified Senior Executive corps. Diversity within the executive corps can contribute to a more responsive and productive government.

OPM has the opportunity to model what affirmative recruitment and access can mean in the workplace. I would like to expand outreach programs to Historically Black Colleges and Universities (HBCUs), Hispanic Association of Colleges and Universities (HACU), minority advocacy groups, fraternal organizations and minority media outlets to recruit quality employees.

4. **Currently, the Senior Executive Service is experiencing pay compression with levels 3 through 6 being paid substantially similar salaries, although their levels of responsibilities and duties differ. What are your thoughts on addressing SES pay compression? How will addressing SES pay compression affect pay for the workforce at large?**

I am concerned about the possibility that "pay compression" problems could jeopardize the federal government's ability to recruit and retain a high-quality, diverse executive corps. If confirmed as the Director of OPM, I plan to discuss the senior executive pay situation with other Administration officials to see what options are available to address any problems we identify. One of the issues I expect to discuss is the effect of SES pay compression on the government's ability to attract and retain high-level technical experts who are needed to carry out the work for which senior executives are accountable. Any

proposal to address these issues must ensure that there is a direct relationship between senior executive pay and accountability for performance.

IV. Relations with Congress

1. **Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?**

   I do.

2. **Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?**

   I do.

V. Assistance

1. **Are these answers your own? Have you consulted with OPM or any interested parties? If so, please indicate which entities.**

   These answers are my own. In the preparation of these answers, I have consulted with OPM for background information.

AFFIDAVIT

I, Kay Coles James, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Kay C. James

Subscribed and sworn before me this 30 day of May, 2001.

Dennis C. Coppuck
Notary Public
9-30-04

SENATOR JOSEPH I. LIEBERMAN
QUESTIONS FOR KAY COLES JAMES, NOMINEE FOR DIRECTOR OF OPM

1. **The term "cafeteria plan" is often used to refer to a program under which an employer provides a set amount of money that employees can use toward a menu of specified benefits, including the cost of health care insurance. The amount paid by the employer for these benefits generally increases each year based on inflation, but in recent years health care insurance costs have increased at a significantly higher rate than inflation. In "Budget Options," a Congressional Budget Office publication issued in February, 2001, the CBO analyzes a proposal under which the federal government could save money by offering employees a flat voucher for health insurance premiums and indexing the amount the government pays each year to the rate of inflation. However, the CBO notes that a downside of this option is that "participants would pay an ever-increasing share of their premiums - possibly over 40 percent by 2006 - if premiums rose as expected." The prospect that employees could be expected to pay a higher share of health care insurance premiums under a cafeteria plan is a matter of serious concern for many federal employees.**

   a. **Will you recommend that the federal government convert to a cafeteria-style plan as described above for employee benefits, including health care insurance?**

   b. **If OPM proposed instituting a cafeteria plan under your leadership, would you prevent a higher share of health insurance premium costs from being shifted to employees? How?**

The FEHBP is a large and important program that needs constant evaluation to assure it remains contemporary and reflects changes in the employer-sponsored health insurance market. As Director, I will ensure that any reasonable alternative that promises to imrpve or expand options for federal employees receives careful study.

Cafeteria-style benefits are popular with many employers and employees because they allow employees to tailor a benefits package that meets their needs and concerns, and they can be tailored as those needs change. OPM's adoption of health insurance premium conversion in 2000 was a step in that same direction. Employers frequently will make a contribution toward the cost of those benefits.

As we consider the changes that may be needed in our overall compensation program, cafeteria plans should merit serious consideration. While I do not have enough information about what the Federal government should do in this area, I do believe we need to consider programs such as these because they affect our competitiveness as an employer.

Whether to provide cafeteria-style benefits is a different issue from how those benefits are financed, and those issues need to be addressed separately. When an employer provides a set amount of money towards the purchase of benefits, this is generally referred to as a "defined contribution." This method of financing the cost of employee benefits can be used in conjunction with, or separate from, a "cafeteria plan." Congress has considered many proposals for a defined contribution formula in the FEHB Program, but instead chose to create the Fair Share formula in 1998.

At this point, it is impossible for me to comment on the CBO estimates. I do believe that it is part of the responsibility of the OPM Director to ensure that federal employees have as many choices as possible for health care insurance and that these choices remain affordable.

2. **Over the past 20 years, the federal government has generally given military and civilian federal employees the same average pay raise each year. However, this year the President's budget proposes to increase military pay by 4.6 percent. I fully support this proposal. Federal civilian employees, who work side-by-side with military personnel in service to our nation, also deserve our strong support. But under the President's budget, civilian employee pay would rise by only 3.6 percent. Attracting and retaining highly qualified federal employees depends in part on the government's ability to offer salaries that are competitive with the private sector. As Comptroller General David Walker testified before our Committee, high-performance organizations must "competitively recruit, hire, develop, and retain employees while recognizing industry and labor market conditions." Do you support parity in pay increases for civilian and military employees? As OPM Director, what strategies will you propose to ensure that the government offers competitive salaries that will attract the skilled workers the government needs?**

I fully support the President's budget proposal. As Director of OPM, I would expect to work closely with the White House and interested Members of Congress as we make final decisions later this year about next year's pay adjustment. I think it will be important to take the conclusions reached by the President's workforce planning and restructuring initiative into account before deciding upon an overall strategy to ensure that the Government offers competitive salaries. A "one-size-fits-all" approach may not be the best way for the Government to compete for the skilled workers it needs.

3. **President Bush has rescinded Executive Order 12871, which established labor-management partnerships in federal agencies and directed OPM to chair the National Partnership Council. Now that this partnership framework is gone, what will you do as OPM Director to encourage productive relationships between labor and management in the federal government, especially where the relationship between labor and management is not good in a particular agency? What role do you think federal employee unions and other employee groups should play in agency decision making?**

The OPM Director can set a tone and an example of inclusiveness, fairness and openness in dealing with federal employee unions and other employee groups and, if confirmed, I will make this a hallmark of my tenure. It is my hope and belief that everyone comes to the table with the same goals: to help make the federal government not only more productive and effective, but also the best possible employer it might be.

My own management style includes working closely and honestly with partners to accomplish mutual goals. I am not certain that "partnership" can be mandated, but I think that if we recognize the important role that unions, management organizations and other representatives of federal employees play in the decision making process, then we are likely to maintain a productive relationship that benefits the employees and the employer alike. In discussions since my nomination with union officials and others, I have made the commitment to work closely with them and to include them, to the greatest extent possible, in the decision-making process.

4. **Your biography on the National Gambling Impact Study Commission web site states that, as Secretary of Health and Human Resources for the Commonwealth of Virginia, you "conducted the broadest down-sizing initiative in state government, reducing staffing levels by more than ten percent." What were the circumstances that led to this downsizing effort? What principles did you use to decide how to reduce the agency's staff and by how much? What were the goals of this downsizing effort? To what extent did you involve state employee unions in the planning process for this downsizing? In hindsight, are there aspects of this downsizing effort that you would do differently today? If so, please describe.**

The downsizing within the Commonwealth's health and human service agencies was intended to be both strategic in nature and correct in scope, what might more appropriately be termed "right-sizing." It occurred after two comprehensive review activities: first, a review of all state activities and regulations by the Governor's Blue Ribbon Commission on Government Reform and secondly, a zero-based budgeting exercise in which individual units in every state agency analyzed their missions and program activities and made budget recommendations based on this review.

My Secretariat reduced overall staffing levels by nearly eleven percent or around 2000 employees. Our principles for this were straightforward: this was not designed to be a "top-down" restructuring, but rather one in which all of the stakeholders were involved in the planning and implementation. Restructuring was not be used to threaten or intimidate employees, to deal with troublesome employees or divisions or simply to cut spending. During my tenure as Secretary, one of our overall goals was to ensure that policy drove the budgeting process and operations and not the reverse and this principle was applied to the right-sizing efforts. I did not believe then, nor do I now, that eliminating waste and duplication and improving employee performance and morale are mutually exclusive goals. Though reducing excess staff and eliminating unnecessary functions were accomplished, we were able to do this in a way that had the least impact upon existing employees and still improved services to our constituents.

No relevant unions existed, but state employees were empowered at all levels to look for ways to improve services and cut waste. Many of the positions eliminated were done so at the recommendation of those at the service level. The vast majority of these positions were budgeted but unfilled and the small number of employees whose positions were eliminated were able to fill other unfilled positions. If a position was deemed necessary, then we went to whatever lengths necessary to ensure that it was protected and filled.

Though every action of this size has some difficulties, I believe that we carried out this right-sizing in a way that was consistent with the Governor's mandate, responsive to the taxpayers and honored the role and contributions of state employees.

5. **In a speech you gave at Hillsdale College in October, 1995, you took the position that government is not only not the answer to the problems that face our society, "it has played a major role in destroying the village." You argue that government has increased in size while creating new problems for society rather than solving them. This philosophy suggests that government should be smaller than it currently is, and should do fewer things than it currently does. Please explain how your views on this subject will affect your policy recommendations as Director of OPM. Will you make recommendations as OPM Director that are designed to reduce the role of government in American society? If so, in what areas? Do you have a view as to the appropriate size of the federal government?**

The speech referenced above was intended to remind the audience that it is not the government's responsibility alone to change society, but rather in partnership with individuals, faith communities, non-profit organizations, and community institutions. The government is capable of great things, but when we erroneously look to the government to solve problems better addressed by individuals, families and communities, we risk creating even more significant problems.

Government does have a role and part of our responsibility is to discern what is and is not appropriate for the government to do. Personally, I do believe in a limited, effective and representative government and one which is accountable to its constituents and ultimately, to the American taxpayers. While some may argue about the government's role in many different areas, there should be little disagreement that OPM fulfills a function that government *should* be doing. Therefore, our task is to ensure that it does this in the most effective, strategic and deliberate manner possible. If I am confirmed to serve as Director, I will continue efforts to ensure that the federal government remains one of the most competitive, diverse and rewarding workplaces in the world.

6. **You serve on the Board of Directors of Amerigroup Corporation, a managed healthcare company that provides health care to Medicaid and Children's Health Insurance Program beneficiaries. Amerigroup advocates requiring Medicaid recipients to enroll in managed care programs. Do you support Amerigroup's policy on this issue? As OPM Director, would you advocate requiring federal employees who participate in the Federal Employee Health Benefits Program**

(FEHBP) to join HMOs? Are there changes in FEHBP relating to selection of HMOs by federal employees that you advocate?

Some federal employees may wish to be enrolled in HMOs, while others may prefer different plans. The hallmark of the FEHB must remain the freedom for participants to make informed choices. The FEHBP should be the place where HMOs and other plans are able to compete for customers based on a number of factors, including outcomes, service and cost.

Often missing from our continuing national dialogue on health care is the recognition that, despite perceived or real problems with delivery and costs, the American health care system is the finest in the world. Managed care can be an important component of our current national health care system. In the past decade, HMOs have done an enormous amount of work to improve services and be responsive to their members, while at the same time maintaining strict controls on cost.

When it is done properly and within certain limitations, managed care can assist those who participate in achieving the best overall health possible because of its comprehensive nature and the emphasis on preventative care. As a former state health official, I understand the states' interest in a healthy population, as well as their desire to manage the costs associated with the Medicaid program, especially in light of health care entitlements. Though the federal government may share these interests, no federal employee should be forced into any health plan.

The structure and purpose of the Federal Employees Health Benefits (FEHB) Program is fundamentally different from the Medicaid Program. The FEHB Program relies heavily on individuals making informed decisions about health plans that will best meet their needs and financial circumstances. Employees and retirees contribute at least 25%, and on average close to 30% of the premium. If they elect more expensive plans, they contribute a greater percentage. On the other hand, Medicaid recipients do not pay premiums.

Since the FEHB Program is structured to encourage informed consumer choice, and the law enables different types of plans to participate on an equal footing, it would not be appropriate for me to advocate one health plan over another.

7. **If you are confirmed as Director of OPM, what recommendation would you make to President Bush regarding the retention, revision or recission of each of the following Executive Orders? If you would recommend revising an Executive Order, please explain what changes you would suggest.**

   a. **Executive Order 12953, which requires federal agencies to cooperate "in efforts to establish paternity and child support orders and to enforce the collection of child and medical support" owed by agency employees.**
   b. **Executive Order 13048, which established the Interagency Council on Administrative Management.**

c. **Executive Order 13058, which requires all executive branch agencies to create a smoke-free environment.**
d. **Executive Order 13078, which established the National Task Force on Employment of Adults with Disabilities to increase employment of adults with disabilities.**
e. **Executive Order 13087, which prohibits employment discrimination in the federal government based on an individual's sexual orientation.**
f. **Executive Order 13124, which requires that persons with psychiatric disabilities be subject to the same federal civil service hiring rules as persons with mental retardation or severe physical disabilities.**
g. **Executive Order 13145, which prohibits employment discrimination against federal employees on the basis of protected genetic information.**
h. **Executive Order 13150, which created a mass transportation and vanpool fringe benefit program for federal employees.**
i. **Executive Order 13152, which prohibits employment discrimination in the federal government based on an individual's status as a parent.**
j. **Executive Order 13160, which provides that no individual, on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent, shall be excluded from, denied the benefits of, or discriminated against, in a federally conducted education or training program.**
k. **Executive Order 13162, which created the Federal Career Intern Program.**
l. **Executive Order 13163, which directed federal agencies to expand their efforts to hire qualified individuals with disabilities.**
m. **Executive Order 13164, which required federal agencies to facilitate the provision of reasonable accommodation to disabled federal employees and job applicants.**
n. **Executive Order 13171, which required federal agencies to create a program to recruit and provide career development to Hispanics in Federal employment.**
o. **Executive Order13197, which authorizes OPM to review the human resources management programs and practices of federal agencies to determine whether they are effective and consistent with merit system principles.**

Although I have not had an opportunity to familiarize myself with the details of each of these Executive orders, I do understand the process by which such orders are developed, revised, and revoked. From time to time, I would expect OPM to draft, and submit to the President for his consideration, orders and memoranda to address personnel management issues. Similarly, I would expect OPM to be consulted regarding the advisability of revising or revoking existing orders and memoranda. When that occurs, I will study the issues, consult the appropriate OPM program office and legal staff, and decide what recommendations to make to the President.

While some of the orders listed in the question do indeed affect OPM, that agency does not have the primary responsibility for development or implementation. For example,

Executive Order 13058, requiring all executive branch agencies to create a smoke-free environment, affects OPM only in the same way it affects every other Executive branch agency. Likewise, the regulatory responsibility for Executive Order13145, barring employment discrimination against Federal employees on the basis of genetic information, as well as for others related to employment discrimination, rests with the Equal Employment Opportunity Commission. OPM would comment on such orders when asked.

At this point, I am not aware of any efforts to rescind or revise any of the Executive Orders listed above. Without a substantial amount of background information and an understanding of the rationale and alternatives, I am unable to offer my opinion about the need and efficacy of particular orders or potential changes to executive orders. I can assure you that I will fully support the President's position on these and other Executive Orders.

8. **The President has announced his intention to end required coverage of contraceptives by health insurance plans participating in the Federal Employee Health Benefit Program. What is your view of this proposal? Please explain.**

My understanding is that the budget eliminates the mandate for such coverage by health insurance plans and that many of the plans have indicated that they will continue to offer these services regardless of whether or not they are mandated. Prior to the legislative mandate, 305 of the 350 health plans within the FEHBP offered one or more form of contraceptive coverage. Many private sector plans do not cover contraceptives at all.

Certainly, there are federal employees for whom this coverage is important. There are others, however, who are seeking different areas of coverage. It is not my understanding that this change represents any opposition to contraception in general, and that is certainly not my position. Though I may be unaware at this point of the budgetary or policy reasons for this particular change, I do believe that the real priority is preserving the flexibility and choices offered to federal employees in the FEHP.

9. **According to a January 16, 2001 letter to the National Women's Law Center from then-OPM Director Janice Lachance, required coverage of contraceptives in the Federal Employee health insurance program has not imposed additional premium costs. Do you agree or disagree with this statement? If you favor rescinding the contraceptive coverage mandate, is it because you believe that this coverage has led to higher insurance costs for the government or federal workers? If that is not your reason, why do you believe it should be rescinded?**

Determination of premium costs involves many factors, including the array of services, utilization rates, risks, population and geography. At this point, I do not know the precise implications of contraceptive coverage on FEHBP premiums nor am I aware whether this was a principal reason for the budget change.

10. **You have said that one of your accomplishments as Virginia Secretary of Health and Human Resources was to cut the bureaucracy by 11 percent in two years as a way of making government less intrusive. ("Private Solutions: The Best Hope for Cultural Renewal," *Religion and Liberty*, Jan/Feb 1996.) Between FY 1996 and FY 1998, OPM was downsized roughly 52 percent. Do you have any views with respect to whether OPM should be further reduced in size? If so, what are your plans for making such cuts?**

As a nation, we have been involved in a dialogue for the past decade about the appropriate size and role of government, at the federal, state and local levels. In Virginia, we did not cut the bureaucracy to make government "less intrusive." We cut the bureaucracy because of waste, ineffective or unnecessary activities and to save the taxpayers' funds. Part of our restructuring effort was intended to give state agencies more flexibility in dealing with particular needs, as demonstrated by the welfare reform initiatives we advanced.

While I have been briefed about the history of the downsizing at OPM, I cannot state at this point whether OPM is at the size and scope its mission dictates. I would prefer to await the results of the workforce analysis that I understand is now being done at OPM before speculating about the appropriate size and shape of the agency. I do know that the agency has made great strides in attempting to privatize functions and will begin to assess these actions in the next few years. I am also aware that several senior positions are, or will become, vacant, necessitating the recruitment or promotion of talented and experienced senior executives. If I am confirmed, I will ensure that these assessments continue and that discussions about the size and scope of OPM include the various shareholders.

11. **As OPM Director, will you retain or overturn the following Office of Personnel Management policies and practices:**

    a. **The practice of including a non-discrimination statement that includes sexual orientation in OPM job postings.**
    b. **Official recognition of OPM GLOBE (Gay, Lesbian, Bisexual Employees) as a "professional association" of OPM employees, with the same privileges (including use of OPM internal mail, use of agency facilities, and use of electronic bulletin boards) they and other professional employee associations currently enjoy.**
    c. **Issuance of OPM's "Policy Statement on Merit Based Principles," which has been reissued each year since 1993 with language that includes as official OPM policy non-discrimination on the basis of sexual orientation.**

My general response would be that a commitment to a merit-based employment system renders much of this discussion moot. If we are truly committed to recruiting, retaining and promoting employees on the basis of merit, then the background, activities, or beliefs of individuals outside the workplace are irrelevant, as long as they do not negatively impact the individual's performance.

The federal government must adhere to its commitment to identify, recruit and retain the best and brightest in the nation.

I am not aware of the Director's role in any of these specific decision-making processes. If there is a role, I would act in accordance with the President's principles and policies. As to professional associations, my understanding is that any group of employees is entitled to use facilities under existing guidelines and requirements.

12. **In a memorandum to Heads of Departments and Independent Establishments, issued May 12, 1980, OPM Director Alan Campbell stated that federal law requires that "applicants and employees are to be protected against inquiries into, or actions based upon, non-job-related conduct, such as religious, community, or social affiliations, *or sexual orientation*." This interpretation of the law is based on the specific inclusion of discrimination as a prohibited personnel practice in 5 U.S.C. §2302(b). In March 1983, as the Justice Department was apparently considering terminating an Assistant United States Attorney because he was gay, then Assistant Attorney General Ted Olsen offered the opinion of the Department's Office of Legal Counsel that such an action would be illegal under §2302 (b)(10). More recently, in January of 1994, OPM Director James King restated this position in a response to a letter from Congressman Barney Frank, as follows:**

"One of the list prohibited personnel practices, § 2302(b)(10), provides that no employee with authority to take or direct a personnel action shall

> **discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others.**

OPM has long taken the position that this prohibition applies directly to discrimination on the basis of sexual orientation."

As OPM Director, would you support this interpretation of the law?

Yes.

Post-Hearing Questions Submitted by Senator Akaka for the Nomination of Kay Coles James to be Director of the Office of Personnel Management

1. **Congress often hears from agencies that they need to be out from under the restrictions of Title 5 in order to have greater flexibilities to attract and retain the right mix of federal employees. However, GAO confirms that agencies already have significant authority under Title 5 to respond to these needs, including relocation bonuses, retention allowances, child care subsidies, student loan repayment programs. What isn't available are the resources to use these flexibilities.**

   It has been suggested that a process be established whereby agencies could appeal to OPM for resources to fund such flexibilities to address their recruitment and retention needs. A fund similar to the Y2K fund could be established for this purpose. What is your view on the establishment of a "Y2K type" recruitment and retention fund?

   I expect to consider every possible avenue for helping agencies address their recruitment and retention challenges. However, I have reservations about the long-term utility of a mechanism like a "Y2K type" fund administered by OPM. First, the Y2K fund was administered, as it properly should have been, by OMB and not by OPM. Secondly, the Y2K situation essentially had a clear time limitation, whereas recruitment and retention are, and likely will always be, ongoing challenges that need continuous planning and attention. I believe it will be more productive to have agencies integrate their budgeting for recruiting and retention incentives and other forms of strategic rewards that you mention into an overall human capital strategy, complete with policies and corresponding budget elements. This strategy would be submitted to OMB. As I understand it, a key outcome of the President's current Workforce Planning and Restructuring initiative is the opportunity agencies have to incorporate this kind of human capital planning – and budgeting – into their ongoing budget plans and estimates. The long-term utility of these Title 5 flexibilities will depend in part on their becoming mainstream methods that agencies use – that is, plan and budget for – within their normal strategic management of human capital. Creating a special purpose fund and appeal process involving OPM rather than OMB does not appear consistent with this longer-term view. I believe OPM can play an important role in helping agencies understand their options and showcasing successful practices for preparing budget estimates and justifications.

2. **For the past two years, federal agencies have had the authority to use their salary and expense accounts to help lower graded employees with child care expenses. A March 2001 report on the program by OPM detailed the positive effects child care subsidies have had for both the agencies that have used them and for employees. The only drawback, agencies reported, was their reluctance to offer valued employees a benefit that might later be rescinded should Congress discontinue the**

program. Do you support continuation of this important program and do you support making it a permanent "flexibility" available to agencies?

In theory, I support assisting lower graded employees with child care expenses and can understand how this program could be beneficial to both the employee and the employer. During my tenure as Secretary of Health and Human Resources in Virginia, I worked to ensure that a full array of high quality and easily accessible child care options were available to those struggling to enter or remain in the workforce. I know that this is a significant factor in an individual's ability to be a productive and effective employee.

At this time, however, I am not familiar with the OPM report. In order to determine whether this program should be continued or made into a permanent option for agencies, I would have to review the regulations that form the basis of the program, specific services provided, and usage by individual agencies and employees, as well as a comprehensive cost-benefit analysis and projections for use in future years.

3. **In the last three years, there has been an unacceptable increase in FEHBP premiums. The program is becoming expensive for lower paid federal employees and unattractive to prospective employees. According to the Kaiser Family Foundation, typical companies with 5,000 or more employees pay an average of 86 percent of the premiums for their employees. State and local governments generally pay 80 percent of the premium, with many paying as much as 90 percent of their employee health insurance coverage, like Ohio. The federal government pays an average of 72 percent. What are your views on increasing the government's share so it may compete more effectively with the private sector for talent?**

I, too, am concerned about the significant and uninterrupted increases in Federal Employees Health Benefits Program premiums in recent years. In order for the federal government to attract and retain employees, it must offer affordable health benefits coverage and ensure that the benefits compare favorably with those of other large employers. However, health benefits represent only one of many parts of a total compensation package that must be considered in evaluating the organization's compensation structure. I am not prepared to discuss specific goals for OPM in this area at this time. However, I would explore options for including additional flexibilities in the current Federal benefits package to ensure that the government offers a highly competitive employee compensation package, including, but not necessarily limited to, President Bush's pledges to contract more efficiently for certain benefits, offer incentives for individuals to seek plans with relatively better value, and coordinate annuitant health benefits with future reforms to Medicare.

Post-Hearing Questions Submitted by Senator Thompson for the Nomination of Kay Coles James to be Director of the Office of Personnel Management

1. **I recently released a report entitled *Government on the Brink*, which detailed the urgent federal government management problems facing the Bush Administration. One of the four core problems facing the federal government is the management of the federal workforce. As you know, GAO this year placed federal human capital management on its high-risk list. Yet, OMB recently announced that civil service reform legislation would not be forthcoming from the Administration this year. What plans do you have to make this issue a priority for the Administration? What process do you envision to bring about civil service reform?**

   Though no one would dispute the critical importance of the management of the federal workforce, there seems to be no agreement on a single solution that can address this multi-faceted problem. Based upon news accounts, it appears that major civil service reform will not be pursued this year through legislative means. That should not be interpreted to mean that the Administration will not address the issue. There are a number of things that can be completed in the coming year that will give us a clearer vision for civil service reform.

   I think that one of the most important things the OPM director can do is to bring all of the stakeholders and interested parties – Congress, OMB, GAO, unions, management organizations and researchers – together to consider effective approaches and the implications of any reforms. I have spoken with OMB Director Daniels and Comptroller General Walker and am convinced that civil service reform will become a priority for the federal government and that we can work together to make it successful. Comprehensive reform will not occur within a year. Instead, it will require a commitment to the development and implementation of a long-term strategy, enacted once an informed consensus has been established.

   One of the first things that the federal government can do, as highlighted in your reports, is to honestly assess the tools for reform that we already have at our disposal. Afterwards, there may be legislative proposals to improve the usefulness of available flexibilities or to assist agencies in any restructuring that might be necessary following the workforce analysis that is currently underway.

2. ***Government Executive* reported June 18, 2001 that the Bush Administration will not seek legislative reforms this year until it has a better understanding of the personnel flexibilities which currently exist in law. We hear that most agencies are not using the personnel flexibilities currently available. How do you plan to educate agencies on the use of personnel flexibilities currently available?**

During the course of my pre-hearing conversations with union representatives, OPM officials, and other officials throughout the government (at OMB and GAO), there was indeed a general consensus that considerable tools and authority are already in place and available to agency directors and their human resource management teams to address many of the human capital issues. I think the Administration is pursuing a pragmatic approach in first reviewing what tools and discretion are available at the agency level prior to assessing legislative needs for even more substantive changes.

At this point, I understand that there may be several efforts underway across government designed to inventory the available tools. As the Director of OPM, I will instruct staff to assemble this information from as many sources as possible, including our own, fact check it and prepare it in a consistent and easily understood format. I will further direct staff to make this quickly and easily available to agency managers and human resource professionals throughout government.

For instance, I am aware that OPM plans to introduce the HR Navigation Guide, a three-part diagnostic tool designed to help Federal managers identify top HR problems and direct them to practical solutions, especially the utilization of current flexibilities, in the near future. The Navigation Guide will provide the tools and guidance necessary to lead managers to strategic HR alignment and more effective management of human capital.

Perhaps most importantly, OPM needs to fully fulfill the role of a technical consultant. I think agencies responsible for technical expertise often fail at their responsibility and duty to serve others in government by merely directing inquires and request for assistance elsewhere. Instead, OPM should provide direct training and expertise to any agency manager or team struggling to either implement or interpret existing rules and mechanisms that lead to better and more strategic human capital management.

3. **The twin objectives of the Civil Service Reform Act were to free federal managers from the "stultifying emphasis on detailed time-consuming processes" to allow them to focus on human resource management. The second objective was to develop sufficient safeguards to minimize potential abuses through discrimination or the politicization of the career service. Do we have your commitment to adherence to these underlying principles?**

   Yes.

4. **Because of greater discretion afforded top management with respect to the Senior Executive Service personnel actions; safeguards were included in the law. Will you, if confirmed as OPM Director, adhere to these safeguards and see that agencies adhere to the law in your role overseeing the SES?**

   Yes.

5. **The District of Columbia has always been in a unique relationship with the Federal government. The Federal government is the largest employer in D.C.and; therefore, issues affecting federal employees have a tremendous impact on D.C. and the region. In the 1980s, the National Capital Planning Commission (NCPC), a federal agency responsible for federal planning in D.C. and the surrounding suburbs, issued the federal elements of the Comprehensive Plan for the National Capital. The Plan establishes a policy that the "historic relative distribution of Federal employment of approximately 60 percent in the District of Columbia, the established seat of national government, and 40 percent elsewhere in the Region should continue..." The NCPC is currently doing an update of the Plan and is considering if the 60/40 split is still the appropriate policy. Federal employment in D.C. has steadily decreased over the years from 65% of all regional federal employment in 1969 to 56% in 1998. More recently, it has dropped close to 50% with 50% moving to the suburbs.**

   The District of Columbia's view of this exodus has been mixed. On the one hand, because of D.C.'s interest to draw more of the private sector to D.C., the movement may be beneficial. On the other hand, loss of a federal presence may hurt D.C.'s status as the seat of the federal government. For federal employees there have also been mixed reactions to this movement. Employees living in the suburbs and close to the new relocations of offices are benefited. However, employees not close to the relocated office space often find the moves difficult, particularly regarding transportation and access to the new locations.

   a. **Will you work with D.C. officials and relevant federal agencies like the General Services Administration to ensure that the interests of federal employees are adequately protected during any new relocations?**

      I will work diligently to represent the interests of federal employees in every deliberation that affects them and their families.

   b. **Will you ensure open lines of communication with D.C. officials so that OPM can be alerted to any unforeseen consequences of federal employment policy of D.C.? If so, how?**

      Yes. It is my understanding that traditionally this has not been an area in which OPM has played a significant role. However, if confirmed as OPM director, I would surely be ready to work with all interested parties to ease transitions if relocation decisions are made. As you are aware, many agencies are required by law to be located in the District of Columbia. If changes in those requirements are proposed, OPM would have an opportunity to contribute to the discussion as part of the legislative clearance process. I would expect to engage in fact-finding discussions with D.C. officials and others before providing input through that process.

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