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SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

"HAS GOVERNMENT BEEN 'REINVENTED'?"

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Mr Chairman, thank you for inviting me to testify at this hearing to review and evaluate the National Partnership for Reinventing Government (NPR) and its various initiatives. The "reinvention" of the executive branch began in late 1993 and is now completing its projected life-span. It is most appropriate, therefore, to assess the accomplishments, the failures, the permanent, and the transitory aspects of this ambitious exercise. Most witnesses, understandably, will emphasize the accomplishments of the effort, leavening the praise with some doubts. I have been requested, on the other hand, to address those areas where the results have been problematical and where basic issues of purpose have been raised. Since time is limited I will address those questions that appear to go to the very heart of the philosophical debate underway over the future direction of government management, and especially the role of Congress in this future.

The reinvention exercise is not simply a number of new practices adopted by the several agencies that together make for better management, rather it is an exercise that could fundamentally alter the character of the executive branch and the executive and congressional oversight roles. The goal of the reinvention exercise is to make the executive branch entrepreneurial in character, structured and operated like a large private corporation. General Electric is often cited as the model. The fundamental issue facing Congress, and especially this Committee, is whether the entrepreneurial management model, with its private corporate approach, is appropriate for the executive branch and whether the role of Congress, as co-manager of the executive branch, is enhanced or diminished by this model? To assist in answering these questions, five issues appear to merit our attention:

- Are the governmental and private sectors essentially alike, or essentially unlike, in their critical legal attributes?
- What values are promoted by entrepreneurial management?
- What values are promoted by public law management?
- What are the congressional interests in this debate over management philosophy?
- What issues were not addressed by reinvention, or addressed negatively?

Are the Governmental and Private Sectors Alike, or Unalike?

The underlying premise of much of the "reinventing government" exercise is that the governmental and private sectors are essentially alike in their characteristics and best

managed according to certain generic business sector principles. The entrepreneurial management model outlined first in Osborne and Gaebler's popular book, *Reinventing Government*, and later in Vice

President Al Gore's *National Performance Review Report*, seeks to replace the "old, broken way," their phrase, with the "new entrepreneurial management." To their mind, the executive branch of the future should be managed in much the same way as large private corporations are managed today. Good government managers, for instance, should be risk takers. In the new government management model, "four key principles" of reinvention should guide behavior:

- cast aside red tape,
- satisfy customers,
- decentralize authority, and
- work better and cost less.

This set of principles is not cast in a theoretical context, that is propositions subject to proof and disproof; rather it is a listing of aphorisms, calls to right behavior. Let us stop for a moment at the first of these calls for right behavior; casting aside red tape. What does it mean? As with much of the reinventing exercise, meaning lies below the surface. At first blush, this call to cast aside red tape is appealing and has few straightforward opponents. Who could argue in favor of red tape? Yet, one person's "red tape" may turn out to be another person's "fundamental right." The term "red tape" is generally employed as a metaphor for laws, executive orders, regulations, and directives, the system of rules that reinventors believe is the principal cause of the executive branch being obsolete and broken. Hence, good managers will cast aside red tape.

What the entrepreneurial management advocates are really seeking in this instance is to free the government manager from as many laws and regulations as possible so they will have the necessary discretion to achieve high performance and results. Performance and results are the end objective of the entrepreneurial management school generally and of the reinventors specifically. Judge them, they argue, on their results, however defined and measured.

The traditional theory of government management, in contrast to the contemporary entrepreneurial theory, is based on the premise that the governmental and private sectors are fundamentally distinct. The foundation of governmental management, according to traditionalists, is to be found in public law, not in behavioral principles of management. The fact is, they argue, that the private and governmental sectors are distinct with the distinctions to be found in legal theory.

With respect to management, the distinctions between the sectors has been described as follows: The distinguishing characteristic of governmental management, contrasted to private management, is that the actions of governmental officials must have their basis in public law, not in the financial interests of private entrepreneurs and owners or in the fiduciary concerns of corporation managers. In short, under the traditional view of government management, the primary objective of keeping the sectors legally distinct is to protect the rights of the citizenry against possible arbitrary government action. This

public law objective takes precedence, in their view, over the management objectives of performance and results.

Lest this discussion appear a bit abstract, it needs to be recognized that the financial collapse of the recently privatized U.S. Enrichment Corporation and the rising debate over the status and practices of Fannie Mae and other government-sponsored enterprises, could be seen as a direct consequence of the problems associated with mixing the governmental and private sector in an entrepreneurial management model.

What values are promoted by entrepreneurial management?

Entrepreneurial management is intended to provide for high performance and results, however they may be defined and measured. The understandable tendency of entrepreneurial, or performance-based, management is to favor government activities that are measurable over those not easily measured. This tendency toward favoring the measurable is not without its risks, however, as demonstrated by the recent problems affecting the Internal Revenue Service.

Of all the agencies, the IRS is the most measurable. It had an elaborate performance-based management system with targets, or quotas, for collecting revenues down to the lowest agent. A full set of performance incentives and penalties were functioning when the agency ran into problems of alleged excesses by the staff seeking to satisfy management's performance objectives. The Director of IRS subsequently apologized and pledged that revenue-based performance goals would no longer be pursued at the expense of fundamental due process norms for citizens. In a conflict between maximizing measured performance and due process of law requirements, the IRS story suggests that the latter ultimately prevails in the governmental sector.

The point to be drawn from this discussion is that while good performance is to be preferred over poor performance, maximum performance by itself is not the primary purpose of government management.

What values are promoted by public law management?

In the public law model, the purpose of agency management is to implement the laws, both the wise and the less wise, passed by Congress as the elected representatives of the people. As a matter of direct delegation under Article I of the Constitution, Congress makes the laws, establishes offices and departments, and appropriates necessary funding. The missions and goals of agencies are determined by law, not by the President or by agency heads, either collectively or separately. While comity and cooperation among Congress, the President, and the agencies are the bases for most relationships among the branches, the authoritative element in the relationship is clear. Oversight of the executive branch is ultimately the responsibility of Congress. Repeatedly, private sector executives brought in to "reinvent" or "re-engineer this or that agency or program along private sector lines are shocked to find that they must meticulously obey laws and regulations, and that they are answerable to Congress for their actions.

The highest value promoted by the public law management theory is political accountability. The debate over the future of government management, therefore, is not so much over whether the specifics of the reinvention exercise resulted in better, or worse, short-term executive management, or whether or not actual "savings" were achieved, but is over which of two fundamental value systems will prevail. Will it be the entrepreneurial management model with its priority of performance or the public law management model with its priority of political accountability?

It would be pleasant to believe that these distinctions present a false, or at least overstated, dichotomy. Unfortunately, it is not really possible, or even desirable, to dismiss the fundamental distinctions between the competing management theories.

What Future Role for Congress?

Congress, as an institution, has a direct stake in the outcome of this debate. Congress co-manages the executive branch through both general management laws, such as the Administrative Procedure Act, Chief Financial Officers Act, Government Corporation Control Act, Title V Personnel Act, some 80 laws in all, and agency specific acts. This Committee was originally established in the late 1940s to continue the work of the Hoover Commission and to develop the managerial capacity and accountability of executive agencies through sound general management acts. The Committee was intended to be the legislative counterpart of the management side of OMB. Congress is arguably best able to perform its oversight role when developing and implementing general management principles and laws. The reason for this lies in the reality that the *U.S. Code* provides for universal coverage unless an agency is specifically exempted. Thus, the burden of proof for exemption from, say, the Freedom of Information Act, lies with the requesting agency. Congress is able thereby to maintain sound general principles while permitting exemptions and flexibility where the burden of proof is met.

The entrepreneurial management school generally finds fault with this traditional public law approach preferring instead that management laws be agency specific and that the agencies be given maximum flexibility over their own management affairs. Thus, in 1996 the Federal Aviation Administration was largely exempted from Title V Personnel Acts. The U.S. Mint, as well as a number of other agencies, have been exempted from the various procurement laws. While at first glance, this represents flexibility to the advantage of agency management, it also means executive management can become much more difficult. Under the agency specific approach, the burden of proof for issues involving accountability to law tends to shift from the agencies to Congress. Congress then may find itself in the unenviable position of having to impose order and accountability after the fact and on an agency by agency basis.

The recent situation involving the U.S. Postal System illustrates the congressional dilemma. Congress has directed the Postal Service to be entrepreneurial and performance driven and has given it numerous exemptions from general management laws. Recent press accounts indicate, however, that the Postmaster General may have given to selected executives substantial increments to their income through manipulation of the re-location allowance for housing. And suddenly, Congress finds

itself directly involved again because the exception involves public monies and the hint of abuse.

As part of the entrepreneurial retreat from general, or executive-branch-wide, management, the central management agencies have been downsized and downgraded in authority. In the case of OMB, the management side of the agency was eliminated altogether in 1994 and personnel put into budget-based teams. The non-statutory NPR team of detailees and consultants run out of the Vice President's Office was viewed by some as the counter-OMB. Now, the NPR itself is scheduled to go out of business. Is there any place in the executive branch where trained, experienced staff personnel are available to develop, implement, and supervise the type of government-wide institutional changes that will be necessary for the 21st century? If, today, this Committee wished to discuss the government corporation option for the troubled U.S. Enrichment Corporation with a seasoned executive branch expert on government corporations generally, would there be anyone to call upon?

What issues went unaddressed by reinvention, or were addressed negatively?

While the reinvention project was portrayed as a comprehensive exercise, and in many respects it was, there nonetheless remained a number of major issues unaddressed or addressed in what critics believed to be a negative manner. Four such issue areas merit mention:

(1) Political and Career Appointments in Top Management

An issue of long-standing debate involves the large number and the placement of political appointees in key management positions, typically in departments from the Secretary down through four levels of management. Critics believe that it is difficult to have the necessary competence and continuity for capacity-oriented management with short-term appointees whose incentives do not favor long-term management initiatives. Calls for substantial cut-backs in the number of political appointees have come from a number of sources including the Volcker Commission in 1988. Defenders of present practices contend that it is the political appointees that make it possible to change the policy direction of the executive branch and that they are more responsive to presidential leadership than career executives. The NPR never addressed the political appointee issue and its impact on executive branch management, thereby indirectly endorsing the status quo. Indeed, the ratio of political appointees to federal employees substantially increased during the Clinton Administration.

(2) Future Role of the Central Management Agencies

Through much of the 20th century, executive branch management accountable to the President was the sought-after objective. Key to enforcement of the general management laws and the protection of the interest of the President were the central management offices: Office of Management and Budget (OMB); General Services Administration (GSA); and the Office of Personnel Management (OPM). The critical role of the central management agencies was generally not assigned a high priority by the

NPR which tended to favor the creation of nonstatutory bodies, such as the President's Management Council, to guide overall management initiatives. Critics of NPR's emphasis on processes, such as those integral to the Government Performance and Results Act (GPRA), tend to argue that renewed attention on institutions is necessary, especially the establishment of a separate Office of Federal Management to serve the President's interests. As it stands, they aver, major issues, such as the "transition process" following the November 2000 presidential election, have no natural home in the executive branch and are likely to go by default to private organizations, such as the Brookings Institution and the Heritage Foundation. In any event, there was no comprehensive review undertaken by the NPR on the future role for the central management agencies.

(3) Implications of Third-Party Management

Increasingly, Congress and the executive branch have turned to the use of third-parties to deliver governmental services and provide policy and management assistance. While contracting- out by the government for services is as old as the republic, recent trends, such as contracting for the operation of INS detention facilities, have raised questions as to whether there are proper limits to what should be contracted for, and what should be retained in-house for performance by officers of the United States. In short, what core competencies must the government retain, not only to protect the citizenry from private abuse, but to insure that it is able to oversee the management of this vast array of contractors? In some agencies the ratio of contractors to federal employees is quite high. In any case, the profound, long-term implications for political accountability of this growing reliance upon third-parties for government operations and management did not receive significant attention by the NPR.

(4) Growth of the Quasi Government

In recent years, both Congress and the President have increasingly turned to hybrid organizations for the implementation of public policy functions traditionally assigned to executive departments and agencies. Their preference has often been to assign administrative responsibilities to organizations with legal characteristics of both the governmental and private sectors. These hybrid organizations (*e.g.*, Fannie Mae, National Park Foundation, Polish-American Enterprise Fund, National Milk Council) have been collectively referred to as the "quasi government." The NPR has generally supported this trend toward greater reliance on quasi governmental bodies, arguing that the private and governmental sectors are essentially alike and subject to the same economically derived behavioral norms. This being so, close partnerships between the sectors should be encouraged. Critics of this trend counter by asserting that increased use of hybrid organizations contributes to a weakened capacity of government to perform its core constitutional duties and to an erosion in political accountability. They consider the governmental and private sectors as being legally distinct, with relatively little overlap in behavioral norms. Like a number of other major philosophical issues, the NPR has not directly addressed the issue of quasi governmental growth and

its implications for governance.

Conclusion

The reinventing government exercise has undoubtedly had its successes, that is decisions and actions that would not have taken place but for the existence of NPR, resulting in better performance and results. These should be properly recognized and the right lessons learned and applied. But as we have noted, agency performance is only a part of the equation of quality management. Ultimately, good management follows from good judgment by managers. Process and measurement cannot substitute for good judgment.

As to the question that promoted this hearing: "Has Government Been Reinvented?" The answer is mixed. At the operational level there has been significant change, much of it for the better, in the way operations are managed and operated. And for this, NPR properly receives its share of credit. Yet, many of these changes have not been without their questionable side-effects. For instance, is it a positive, or negative, policy to encourage the naval command at Patuxent Naval Air Station, in the name of "profit," to contract out its high tech planes and personnel to the State of Maine to hunt for healthy blueberry patches? There can be a legitimate clash of opinion over whether it is wise and creative for Patuxent to go entrepreneurial, or whether this initiative results, if not immediately then soon, in a perversion of the mission and character of government management. What may appear initially as a rather simple operational decision may, in fact, be a decision with considerable policy and legal implications. These types of tough issues were not addressed by the NPR, or by any one else for that matter.

At the legal and institutional level, Congress might reasonably be more critical. When all is said and done, the fundamental purpose of government management remains what it has been since 1789; the implementation of the laws passed by Congress. This purpose has not been altered or "reinvented." The "reinventing government" exercise has essentially been an exercise in altering certain incentives in the management practices and operations of government. Because it is concerned principally with processes, and since processes have been in constant change since the Progressives pushed for "efficiency" and "Scientific Management" a century ago, there is every reason to believe that much of the reinvention exercise will have transitory impact. If history is a guide, "reinventing government" will be criticized and superseded by the next generation's "tide of reform," a tide with its own management principles and peculiar language.

1. David Osborne and Ted Gaebler, *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector from Schoolhouse to State House, City Hall to Pentagon* (Reading, MA: Addison-Wesley, 1992).

2. U.S. National Performance Review, *From Red Tape to Results: Creating a Government That Works Better and Costs Less* (Washington: GPO, 1993). The NPR, a non-statutory organization, continued to issue reports through 1997 (e.g., *Businesslike Government: Lessons Learned from America's Best Companies*, 1997).

3. "Public entrepreneurship is a management approach developed by the reinventing government movement.... The transformation of existing, outdated bureaucratic organizations into agile, anticipatory, problem-solving entities is what reinventionists call 'entrepreneurial government.'" Steven Cohen and William Eimicke, "Is Public Entrepreneurship Ethical? A Second Look at Theory and Practice," *Public Integrity*, 1(Winter 1999), p. 55.
4. Barry Bozeman, *All Organizations Are Public: Bridging Public and Private Organizational Theories* (San Francisco: Jossey-Bass, 1987). Ronald C. Moe and Robert S. Gilmour, "Rediscovering Principles of Public Administration: The Neglected Foundation of Public Law," *Public Administration Review*, 55(March/April 1995): 135-46.
5. Testimony of Joseph Stiglitz, Chairman of the President's Council of Economic Advisers (1993-97), before the House Committee on Commerce, Subcommittee on Oversight and Investigations, on the "Privatization of the U.S. Enrichment Corporation," April 13, 2000. Bruce Auster, "The Art of the (Raw) Deal: A Government-owned Company Goes Private. Guess Who Gets Rich?" *U.S. News and World Report*, April 24, 2000, pp. 22-23.
6. Peter J. Wallison and Bert Ely, *Nationalizing Mortgage Risk: The Growth of Fannie Mae and Freddie Mac* (Washington: American Enterprise Institute, 2000).
7. Subsequent investigations have largely cleared the IRS of the alleged excesses in the collection of taxes. Albert B. Crenshaw and Stephen Barr, "GAO Report Exonerates IRS on '98 Accusations." *Washington Post*, April 25, 2000, p. E1.
8. Statement of IRS Commissioner Charles O. Rossotti issued January 13, 1998, *Daily Tax Report*, Bureau of National Affairs, January 14, 1998, p. 3.
9. Robert S. Gilmour and Laura S. Jensen, "Reinventing Government Accountability: Public Function, Privatization and the Meaning of 'State Action,'" *Public Administration Review*, 58(May/June 1998): 247-58.
10. U.S. Library of Congress, Congressional Research Service, *General Management Laws: A Selective Compendium*, ed. Ronald C. Moe, CRS report RL30267 (Washington: July 28, 1999).
11. Public Law 104-50.
12. The U.S. Mint's Public Enterprise Fund, 21 U.S.C. 5136 states: "... provisions of law governing procurement or public contracts shall not be applicable to the procurement of goods or services necessary for carrying out Mint programs and operations." The U.S. Mint interprets this provision of law passed by Congress very broadly to mean: "The intent and effect of this legislation is to enable the Mint to effectively operate as a profit-making, manufacturing, direct marketing, and retail business." U.S. Mint, *Procurement Guidelines*, CFO-PROC-66-R, December 1999.
13. Stephen Barr, "Postal Relocation Deals Stir Capitol Hill Anger," *Washington Post*, April 15, 2000, p. A13. Stephen Barr, "Postal Official Retires as Report Faults Relocation Payments," *Washington Post*, April 22, 2000, p. A2.
14. U.S. Office of Management and Budget, "Making OMB More Effective in Serving the Presidency: Changes in OMB as a Result of the OMB 2000 Review," OMB Memorandum No. 94-16, March 1, 1994. In defending the 1994 elimination of the separate management division, then OMB Director, Leon Panetta stated: "Critics of these recommendations may say the effort to 'integrate' management and the budget will end in merely bigger budget divisions, whose management responsibilities will be driven out by daily fire-fighting on budget issues.... We believe this criticism is based on a false premise that 'management' and 'budget' issues can be thought of separately." "Executive Memo: OMB Management Merger," *Government Executive*, 26(April 1994), p. 8. Alan Dean, Dwight Ink, and Harold Seidman, "OMB's 'M' Fading Away," *Government Executive* 25(June 1994): 62-64. Ronald C. Moe, "At Risk: The President's

Role as Chief Manager," in *The Managerial Presidency*, 2nd ed., James Pffifner, ed. (College Station, TX: Texas A&M University Press, 1999): 265-84.

15. The Volcker Commission concluded: "[The] growth in recent years in the number of presidential appointees, whether those subject to Senate confirmation, noncareer senior executives, or personal and confidential assistants, should be curtailed. Although a reduction in the total number of presidential appointees must be based on a position-by-position assessment, the Commission is confident that a substantial cut is possible, and believes a cut from the current 3,000 to no more than 2,000 is a reasonable target.... The mere size of the political turnover almost guarantees management gaps and discontinuities, while the best of the career professionals will leave government if they do not have the challenging opportunities at the sub-cabinet level." National Commission on the Public Service, *Leadership for America: Rebuilding the Public Service* (Washington: National Commission on the Public Service, 1989), p. 7. On January 19, 1999, Senators Feingold and McCain introduced legislation (S. 125) that would limit the number of political appointees government-wide to 2,000. *Congressional Record* (daily ed.) January 19, 1999, p. S554. Paul C. Light, *Thickening Government: Federal Hierarchy and the Diffusion of Accountability* (Washington: The Brookings Institution, 1995).

16. U.S. Office of Personnel Management, *Monthly Report: Comparison of Total Civilian Employment of the Federal Government by Branch, Agency, and Location* (Washington: OPM, 2000), Table 2. Total for political appointments provided by Roger Garcia, Congressional Research Service, April, 2000.

17. Peri E. Arnold, *Making the Managerial Presidency: Comprehensive Reorganizing Planning, 1905-1996*, 2nd rev. ed. (Lawrence, KS: University Press of Kansas, 1998).

18. National Academy of Public Administration, *Revitalizing Federal Management: Managers and Their Overburdened Systems* (Washington: NAPA, 1983).

19. See: Testimony of Herbert N. Jasper and Dwight Ink before the House Subcommittee on Government, Information and Technology, *Oversight Hearing on Office of Management and Budget*, April 7, 2000.

20. Donald F. Kettl, *Sharing Power: Public Governance and Private Markets* (Washington: The Brookings Institution, 1993).

21. Critics have tended to fault the use by NPR of declining total executive branch civilian employment statistics as evidence of a "smaller government" when the total number of contracted employees appears to be on the increase. For a complete discussion of the "size of government" issue and of third-party management generally, see: Paul C. Light, *The True Size of Government* (Washington: The Brookings Institution, 1999).

22. Harold Seidman, "The Quasi World of the Federal Government," *The Brookings Review*, 2(Summer 1988): 23-27. U.S. Library of Congress, Congressional Research Service, *The Quasi Government: Hybrid Organizations With Both Government and Private Sector Legal Characteristics*, by Ronald C. Moe, CRS Report RL 30533 (Washington: April 15, 2000).

23. In explaining the motives of naval officers at the Patuxent air station, a reporter noted: "With defense budgets shrinking and more cuts threatened, military research labs and testing bases in the Washington area are aggressively seeking such business deals to help pay the bills and keep expensive facilities and equipment operating. Consultants are even training government program managers and engineers to think like copier salesmen and 'sell' their products." Steve Vogel, "Pentagon Recruits New Business: Military Turns to Private Enterprise to Help Pay Bills," *Washington Post*, August 8, 1998, p. B1.

24. Ronald C. Moe, "The Importance of Public Law: New and Old Paradigms of Government Management," in *Handbook of Public Law and Administration*, eds. Phillip J. Cooper and Chester A. Newland (San Francisco, CA: Jossey-Bass Pubs., 1997): 41-57.

25. Paul C. Light, *The Tides of Reform: Making Government Work, 1945-1995* (New Haven: Yale University Press, 1997).