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a. NAME (Last, First, Middle Initial) Sanders, Ronald	b. RANK	c. TITLE Associate Director for Human Resources Policy
d. OFFICE		e. AGENCY OPM

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a. NAME (Last, First, Middle Initial) Christenson, Joel	b. TELEPHONE NO. (Include Area Code) 703-697-3367
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NSPS-002 Dr Ronald P Sanders FINAL CLEARED
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Q: This is an oral history interview with Dr. Ronald P. Sanders, currently Associate Director of National Intelligence for Human Capital, formerly Associate Director for Strategic Human Resources Policy at OPM. The interviewer is Diane T. Putney. It's July 14, 2008, and the interview is taking place at the OSD Historical Office. The purpose of this interview is to record your experience, Dr. Sanders, with the evolution of the National Security Personnel System, NSPS, at the Department of Defense. A transcript of the interview will be preserved as a permanent NSPS record and may be used as source material for a DoD history of the NSPS. The specific objective of this interview will be to explore the coordination between the Office of Personal Management, OPM, and the Defense Department in the design and implementation of the NSPS. You'll see that the questions are arranged chronologically. Now on to the first question, and it's an easy one: Would you briefly describe your career and leadership experience up to the time when the Department of Defense was designing its National Security Personnel System?

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A: OK. Only because I think it's relevant and not to clutter the transcript, I'm going to go back two decades, to around 1990--that's not quite two decades, but it's getting close. I have basically spent most of my federal career with the Department of the Air Force as a civilian--a couple of field assignments--eventually joining the Air Staff in 1979. Over the ensuing decade I eventually became Deputy Director of Civilian Personnel for the Department of the Air Force.

In 1990 I was named Director of Civilian Personnel for the Defense Department, the senior career HR--human resources--executive in the Department reporting to what at the time was the principal political position, a Deputy Assistant Secretary for Civilian Personnel Policy. I served in that capacity from about 1990 through 1998, and beginning in 1993 I was dual-hatted as the first head of the Defense Civilian Personnel Management Service. Those two offices--the Office of Civilian Personnel Policy and then the Defense Civilian Personnel Management Service--ultimately played a key role in NSPS about ten years later.

I left DoD in '98, joined the Internal Revenue Service as their Chief Human Resource Officer as part of the team that Charles Rossatti brought in to transform the IRS. I spent

about four years there, and then in late 2002, as a result of a reorganization at the Office of Personnel Management, I joined Kay Coles James as one of her direct reports, Associate Director for Strategic Human Resource Policy, the first time that that position had ever existed. It essentially consolidated all of the various policy functions across the Office of Personnel Management. (The only reason I'm boring you with this is because I think it does eventually play into NSPS development.)

Q: Sure.

A: Before the OPM reorganization there was a political Director of Policy and an office of maybe one or two the broad functional areas in OPM had its own policy unit. Staffing had a policy unit, as well as operations; pay had a policy unit, as well as operations; et cetera, et cetera, across the board. The reorganization that Kay James engineered started with a broad brush, and then when her senior leadership team came over, including me, we sketched out the details. It essentially flipped the organization 90 degrees. Instead of being functionally organized, it was more by major business line. My business line was Policy. So I took all of the Policy areas--staffing, pay, labor relations, information systems, etc., health benefits,

retirement--and put them all in one shop. One of my principal missions was to be the originator of federal regulations that OPM issued. That was how OPM expressed policy, by developing federal regulations, sending them out for comments, looking at the comments, and then issuing those regulations in final form. Instead of doing that in separate offices, all of that was now under me. I won't bore you with the other parts of the reorganization.

I held that position until 2005, then I got a call from a guy named Mike Hayden, who at the time had recently been named Principal Deputy Director of National Intelligence (DDNI), with John Negroponte as first DNI. They asked me if I wanted to come over and help them with this new startup. I was one of the original plank owners of ODNI and have been there ever since. I went over in June of 2005; I've just passed my three-year anniversary.

Q: Well, congratulations, you're still there. You seem to be involved with reorganizations or reforming systems in your career to a great extent. How and when did you become involved in helping to develop the National Security Personnel System?

A: Obviously, some of this had its roots when I was Director of Civilian Personnel in DoD, way back in the early and

mid-90s. I had oversight responsibility for all of the various personnel demonstration projects. We had just secured legislation in DoD to expand those demonstration projects for the acquisition workforce, as well as for the DoD laboratories. Those were efforts I'd been involved in from my very first days with DoD. There'd been a couple of Air Force demonstration projects in which I was deeply involved in my Air Force days. Much of NSPS goes back that far.

Let me also wind the clock back a bit. One of the first things I was charged with doing at OPM--and this later became sort of the precursor to NSPS--was to develop collaboratively with the Department of Homeland Security its new personnel system. The Homeland Security Act had just been passed at the time I arrived at OPM. It had a provision in it that said DHS and OPM would together jointly develop the regulations for a new personnel system that included not just performance management and pay, but adverse actions, collective bargaining, et cetera, the gamut. We were well into that effort about the time DoD started shopping around for a proposal for NSPS. The overlap was that we had just finished issuing proposed federal regulations for DHS about the time that the DoD NSPS legislation was being proposed on the Hill, discussed,

and eventually enacted. And from an OPM perspective--from my perspective--much of what we did in DHS, both in terms of substance as well as process, was almost directly transferable to NSPS. So shortly after--shortly before the law was passed--and my understanding is that this is primarily focused on post-legislation?

Q: Yes. Some legislation, but mostly in late 2003, 2004, it really picks up.

A: OK. I had been involved with the OPM team that represented OPM's interests in all of the internal executive branch discussions over the legislation, and then on the Hill. Break, break. Legislation passed; now we're ready to begin. So this was early in the year, I believe in 2004.

Q: You had mentioned the demonstration projects and your involvement. That experience then must have gone into the book you coauthored, *Transforming Government, Lessons From the Reinvention Laboratories*. Was it wise for the Department of Defense to develop its concepts for NSPS by relying on the Defense Department's experience with its own demonstration projects? Were there good "lessons learned" from them that could be used for NSPS?

A: I think there were. They certainly served as an effective proving ground for many of the pay-for-performance models.

In fact, in my humble opinion, while I was at IRS, something called the IRS Restructuring Reform Act of 1998 gave us pay flexibilities comparable to both DHS and NSPS. We had been in the throes of implementing a pay-for-performance system at IRS before I left to go to OPM. We drew heavily on the demonstration project experience in DoD. Not just because I had come from DoD, but because that was basically where most of the institutional knowledge was. Presuming one wanted to learn from those lessons, they certainly provided many of them. Unfortunately, they didn't really deal with a unionized workforce. That was one of the great unknowns in moving forward with NSPS and the various pieces of that legislation.

Q: What was OPM's relationship with the Defense Department labs?

A: Pre-NSPS, primarily an arm's-length relationship. OPM in those days had not yet assumed a consultative approach to its agency dealings; that was another key piece of the OPM reorganization in early 2003. Prior to 2003, OPM evaluated agencies, conducted oversight, and, in the case of the demonstration projects, did a number of very intensive audits of the projects to determine whether they were fulfilling their intended purposes. The early

demonstrations came under statutory authority that required that role of OPM. Some of the later demonstration projects, for example, involving the acquisition and the lab workforce, while they didn't necessarily mandate as intensive OPM oversight as the original demonstration projects, the relationship with the Department was still primarily evaluative--I know that on the DoD side, we saw those evaluations as very useful when I was there, and they proved to be excellent reference materials as we began to move forward with NSPS.

Q: How much influence did the Office of Personnel Management have on the development of the NSPS legislative proposal drafted in the Pentagon and sent over to Congress in April of 2003?

A: Some. Not nearly as much as its eventual influence on the content of the regulations that implemented the legislative proposal. At the risk of telling you what has already been documented elsewhere, the principal debate between OPM and DoD, as the legislative proposal was being developed, was a so-called "national security override." The Homeland Security model basically required that OPM and DHS develop its personnel system together, with OPM's role being there primarily to protect governmentwide interests, merit

principles, et cetera. Many, if not most of those principles, were carried forward in the original NSPS legislative proposal. Instead of this mandate for joint development, the original DoD proposal--and I think ultimately the one that went to the Hill--provided for this national security override that basically said, if OPM and DoD reached impasse in trying to jointly develop these regulations, then the Secretary of Defense could say, "In the interest of national security, I win." In OPM I played a delicate and sometimes awkward role because of my history with the Department and my close friendship with most of the people who were working this, and my desire to strike the right balance in the legislation after almost two years of work with Homeland Security. I saw the benefit of this creative tension between a line agency like Homeland Security, which was very, very much focused on mission, and OPM, which was very much focused on process and principle. The way we implemented that with DHS, it was not either/or, but rather both/and. I'll speak personally. My focus was on trying to find the right balance between DoD's national security focus and OPM's job to protect the merit system. In my view, you can still modernize the merit system, without abandoning its "principles," you just have to operationalize them differently. Much of the debate--not

just with me, but with others--was to try to find that right balance between the two potentially competing, potentially complementary sets of interests. This ultimately was elevated to the White House, and then White House Chief of Staff Andy Card was involved. I was not present for that meeting, but I was involved in the preparation for it. At the end of the day--and my memory's a bit foggy here--there were half a dozen major issues that were put on the table with the White House. They included things like how strongly the legislation would address veterans' preference, whether DoD would be allowed to create its own separate Senior Executive Service. It also included the national security override for what was within the scope of the federal regulations that the two parties would ultimately issue. Again, my memory's a bit foggy on the ultimate result, except on those key points: That the administration said "no-give" on veterans' preference. We'll allow some flexibility there, but as a general proposition, the Bush administration wanted no part of essentially abandoning veterans' preference and didn't want legislation that would even suggest that.

The same thing with Senior Executive Service, where the original legislative language would have potentially allowed DoD to create its own SES. The White House said,

"No, there's going to be a single governmentwide Senior Executive Service." It did allow, though, for what remained within the scope of the legislation, and that included the ability to change collective bargaining, performance management, some staffing, classification, compensation and adverse action rules. It did allow those, and it did allow great flexibility in the end result.

I know that after the proposal went to the Hill, the Senate Governmental Affairs Committee got involved. They took the DoD legislative proposal and eased it back into something that more closely resembled the Homeland Security model. Particularly on this point, the relationship between OPM and DoD, the net result was that the regulations would be jointly derived; there would be no national security override. I think at the end of the day, the administration--I'm not sure that's the result DoD wanted--but I think the administration writ large found that acceptable. Because, look, at the end of the day, you've got a chain of command in the executive branch. If little old OPM disagreed with something that DoD wanted to do, and they reached impasse, there is a chain of command to resolve that impasse. The President simply says--or the Chief of Staff, or whomever the President so designates--simply says, "This is the way we're going to go," much as

the Chief of Staff did in crafting the legislation, in deciding a course of action that attempted to balance some of those early competing interests. I think at the end of the day we concluded that the executive branch could still move forward without the national security override and did not have to worry about abandoning the national security interests of the Department.

Q: Once the proposed legislation is over there on the Hill, what does OPM do to push that through to become the National Defense Authorization Act of 2004? Did the Director of OPM, Kay Coles James, testify?

A: She did. Yes, she did in the run up to it. OPM was in a very awkward position, because we were essentially defending that national security override, even though we didn't really believe that it served governmentwide interests. My role was limited to, almost in every case, accompanying DoD officials and meeting with congressional staffers and one or two members, as I recall, to explain how we were going to approach this. In those instances, my role also included describing how we had approached this with the Department of Homeland Security, how we had written the regulations, how we had been interpreting the law, et cetera. As I said, these were in parallel, but

slightly staggered, timelines, so that just as NSPS was hitting the Hill, DHS's regulations were hitting the street, and the first early concerns about employee interests and union interests were starting to surface. Frankly, that was one of the reasons we had a sense of urgency. We didn't want Congress to be diverted by Homeland Security, by the challenges it was likely to face in its early implementation, and then postpone action on the NSPS legislation. My role during the lengthy passage of the legislation was primarily off-line, backroom dealing with staffers, in almost every case accompanied by DoD officials.

I should mention one thing, because this may or may not be an important piece of the history. Before the legislation-- actually this is post-legislation, so I'll stop.

Q: OK.

A: I want to tell you about the letter. Have you heard about the letter?

Q: Yes, I have a question on that. As the NSPS portion of the Defense Authorization Bill makes its way through Congress it generated much opposition from some members of Congress and from unions representing DoD employees. The bill does become law, and then when DoD starts to implement, the NSPS

stirs a firestorm of controversy from the unions. You're over at OPM, you are aware of all this controversy, how specifically is Director James tracking the progress of NSPS?

A: Immediately post-enactment--even though the final bill did not include the national security override, and it did provide for joint development of the regulations--OPM was largely locked out of the room. Certain officials in DoD-- I'll go back to your question about the demonstration projects--essentially thought you could take policies that had been culled from those demonstration projects, put them in federal regulation format, and issue them. Similarly, they thought that dealing with the unions would be more or less, "Here it is, take it or leave it." We found ourselves, the language of the law notwithstanding, closed out from most of those substantive discussions. For example, DoD had a meeting--a relatively infamous first meeting--with its several dozen labor unions, and we found out about it the morning of the meeting. So OPM, from the Director on down, was concerned that this was moving down a path that we weren't comfortable with, and more importantly, we didn't think comported with the law. We were afraid that--again, just as DHS was starting to heat

up over here--this would draw congressional oversight and eventually congressional action adverse to our interests.

So, I can remember sitting in a staff meeting one day with the Director and trying to figure out what we were going to do about it. And Kay said, "We need to put our concerns down in writing, in terms of both *process* and substance."

She said, "Ron, you draft it." This was at a fairly critical stage, shortly after the meetings with the unions. This thing looked like it was going to go downhill fast. I think her intention was to, essentially, for the record, put DoD on notice. "Here are our concerns about the way you're heading. We can't stop you." You know, this is little old OPM, this is big DoD. "We want to work with you, but here are our concerns." So this was a seven- or eight-page letter. I drafted it; it went through a couple of iterations. She sent it to, I believe, the Secretary, but Kay had a close relationship with Paul Wolfowitz, the Deputy at the time. My understanding from others is that DoD was also coming under some pressure from Congress because of the early initial stumbles. David Walker from GAO had also weighed in informally with DoD leadership at that same level, at the Wolfowitz level, because David had two stakes in this. One, GAO was pushing pay-for-performance governmentwide; they didn't want to see

something as big and as important as DoD fail before it even got started. Two, he had his own pay-for-performance effort under way; he didn't want anything the DoD was doing to spill over negatively on that.

Along about the time of this letter, we had a couple of very stormy staff-level sessions with DoD--basically me and senior OPM staff dealing and debating with Ginger Groeber, who was the Deputy Under Secretary at the time, about how we would proceed. Even though some of these issues had been addressed and resolved before the administration's legislative proposal had been submitted, we found ourselves revisiting them, for example, veterans' preference.

Basically, where I was coming from, or OPM was coming from in those meetings, was why reinvent the wheel? We'd already been through a very long and painful but ultimately, we thought, productive, exercise with DHS and its unions in fashioning federal regulations that struck the right balance between DHS's mission and merit principles. While it was worth revisiting them and looking at them in a DoD context, there was no need to start from scratch.

These were very stormy discussions with no progress in making any inroads on my level or above me. The letter was sent, others weighed in. Secretary Rumsfeld shortly

thereafter--and I don't know what went on in the innards of DoD, other than "RUMINT" (rumor intelligence)--he announced what we all later came to call the "strategic pause."

Q: Right before that was the letter from the OPM Director, and that was March 9th. But shortly before that, according to some documents, OPM sent over George Nesterczuk in February to help NSPS being stood up. He went over before the letter was sent when all these discussions are under way with Ginger Groeber and others. What was he supposed to do, and who asked that he be sent over? Was he just offered? Why did it come about that somebody from OPM is assigned, even before the "strategic engagement," to try to help OPM's voice be heard over there?

A: George's involvement was based on a model that Kay had established with the Department of Homeland Security. Early on, before I got to OPM, but immediately after the Homeland Security Act was passed, she brought back as a re-employed annuitant a gentleman named Steve Cohen, who had actually been Acting Director of OPM for a time, between Clinton and Bush administrations, and set him up with DHS. For any agency--particularly Homeland Security, where they're not only standing up, but they're about ready to design from soup to nuts an entire new personnel management system--

getting into OPM and finding the right place to go and the right expertise, et cetera, would have been extremely confusing. And at the time OPM was functionally fractured. You would have to go one place for one thing and another place for another, as opposed to one stop. So she brought Steve in, and Steve served as the principal liaison between OPM and Secretary Ridge, and at the time, Deputy Secretary England, and later Jim Loy. When we got to the regulation writing stage, Steve and I were essentially the two lead OPM people in the long hours of collaborative regulation development with DHS. Then we were the DHS principal spokespersons for OPM along with three from DHS when we dealt with the DHS unions.

So along comes NSPS. This was essentially a replay of the model. She picked George, I think in large part, because of his history in Congress. He of course had been in OPM for a time, but also had spent many years on the Hill with the House Civil Service Subcommittee. I'm sure that she wanted to take advantage of his political connections on the Hill and within the Bush administration. That said, again, same deal, George is our full-time person. He's the one that would go to the meetings. I couldn't do that because I had other responsibilities besides DoD, not the least of which was Homeland Security. I don't think DoD asked for it. I

think she offered it up as a help, that instead of having to worry about going all over OPM, "Here, this is our person. He speaks for me. He's there for you." Early on he was not included. I think George managed to make that first meeting with the unions. I remember talking to him when he returned. He said, "I just sat in the corner. I didn't want any part of this."

Q: Was that the infamous--February 26/27, two-day meeting? I've seen this word "infamous" a lot when people referred to it. The "infamous meeting." When I talk to people who were actually there, I'm going to just have them describe the whole thing. Start to finish.

A: Pretty ugly as I understand it.

Q: Then I find myself always using the adjective "extraordinary" concerning the letter that Director James sent to Secretary Rumsfeld on March 9th. That was really blunt. It was clear. She had 41 pages of attachment criticizing the DoD proposals. One of the points that was raised that--

A: I enjoyed writing it.

Q: --that NSPS was a little too narrow. One of the issues in particular she mentions was the different views of locality pay. Would you quickly describe OPM's vision of locality

pay based on market conditions and occupations, and how it differed from the way DoD was thinking about it at that time?

A: DoD essentially decided it would not exercise the authority that the law gave it in terms of a more market-sensitive approach to pay. Its focus was exclusively on the performance-based pay piece. Frankly, at OPM, we were looking for a way to fix the government's market-setting pay mechanism, established first with the Federal Employee Pay Comparability Act of 1990. Everybody in town knows that that system is broken, the annual General Schedule increase that the President proposes and Congress tinkers with. There's no science whatsoever to it. So our thought was here we have an organization that is anywhere from a third to a half of the federal civilian population, and we should at least start with the premise that we want maximum flexibility. We really wanted to look at labor markets and match jobs and take full advantage of the tremendous flexibility that the NSPS statute gave us.

Early on before NSPS was submitted as a legislative proposal, much less passed, DoD came over with a proposed set of federal regulations under the demonstration project authority, which OPM had control over in many respects.

Essentially this was DoD's attempt to accomplish by regulation what they weren't sure they could accomplish by legislation--they wanted to take the regulations as far as current law would let them and cover as many people as current law would let them. Depending on how you count it, it would have got them up to 130, 150 thousand people, all by issuing regulations. Those regulations had to be issued jointly by DoD and OPM. They came over with that package. Break, break. NSPS legislation moves, gets passed. They come back with essentially that same package, without taking into account the flexibilities that the law gave them, or frankly the work that we had done with DHS to take a very similar statute and flesh it out to a great degree. Where we ended up in many respects was just reinventing the wheel, at least in those early days.

Q: Also in the letter to Rumsfeld, Director James urges Rumsfeld to publish broad regulations for NSPS, followed by the publication of detailed implementing directives. What was OPM's thinking behind that strategy? And is that something required by law? Ginger Groeber was not going to do it that way, but why is OPM suggesting that that's the way to do it?

A: Two reasons, one strategic, one tactical. The strategic: One of the things that had become clear to us with DHS and was eminently clear to me with my background in DoD is that it was going to be very, very difficult to do one size fits all. The more detailed you became in those regulations, the more they would handcuff you because in order to change them you would have to go through the same agonizing process of consultation with the unions, publication of proposed rules, accepting comments, et cetera, et cetera, et cetera. Not exactly a nimble process. One of the things we had perfected with Homeland Security was fairly broad regulations, written at the 'statute level,' but with the provision that the Department--in this case DHS--could issue implementing directives with very little union involvement. We could guarantee relatively little union involvement because the law also let us rewrite the collective bargaining system. So here we have DoD with essentially the same construct, the language in the law only slightly different, and in fact, more than slightly as the courts were later to rule. With that said, at the strategic level, you're better off with broad regulations. You can build yourself in those same regulations a much more flexible way of fleshing out the details; if you find

they don't work, they can be changed far more ably than if you had to republish them.

The other was tactical. It wasn't clear that, in sitting down with the unions--again, based on our DHS experience, mine personally--that we were going to get agreement.

Getting union agreement was a dim prospect to begin with.

Going in with such a gory level of detail further lessened the chances of getting that agreement. Just because the more detailed you got, the more complex, the harder they were to understand, and the more difficult those

consultations would be. So we were worried about biting off more than we could chew. Also, from the more general

construct, we liked the model of broad regulations. After all, that was essentially how OPM had approached changes to the Civil Service laws. In many respects, this was like a Civil Service law. Write the law broadly, get Congress to

be done with it because the more detail Congress gives you, the harder it is to ever change it if you find it doesn't work. So like a law, write the regs broadly, leave the

implementing regulations to cover the details. That

provision, of course, the unions seized on as an argument for changing the NSPS statute, but that was later in the saga.

Q: Right. You mentioned collective bargaining and the third point I wanted to bring up that came from the letter Director James sent. There seems to have been some confusion among some members of Congress--and even at OPM, based on what some of the content of that letter stated--about whether the NSPS statute allowed the Secretary of Defense to curtail or eliminate unions' collective bargaining rights. For unions representing Defense Department employees, how did the NSPS legislation change their right to bargain collectively?

A: The NSPS law said you could literally rewrite the labor relations system. And those words--which are different than the Homeland Security Act--ultimately led the courts to affirm what DoD and OPM ultimately regulated, even though Congress by that time had made the whole thing moot. In theory, we thought we could essentially rewrite Chapter 71, the Federal Labor Relations statute, knowing full well the NSPS statute said that that would only be good through, I think, 2009.

Q: Nine, right. But is it correct that even some members of Congress thought that Chapter 71 still held? Certainly the unions always referred to Chapter 71 as the Labor Relations law. But the NSPS law actually allowed Chapter 71 to be

waived, which had enormous implications for collective bargaining.

A: Right. In both cases, the Homeland Security Act and then the DoD Authorization Act that gave us NSPS were products of the legislative process, and sausage was made. They both had up front a set of guiding principles, including something that said--and I don't remember the exact words--that employee collective bargaining rights would be preserved. Then later on in the very same law they said, in their slightly different but important ways, Homeland Security and OPM, and then later DoD and OPM, could rewrite the system. They could waive Chapter 71 or write a new labor relations system. That the law seemed to giveth and then taketh away, depending on your perspective, became a bone of contention in both cases endlessly. Until the courts stepped in.

Q: The statute was confusing.

A: Right.

Q: There is confusion, you mentioned the word sausage.

A: Yes.

Q: You'd mentioned that Secretary Rumsfeld calls the "strategic halt." Then "strategic engagement." That led to the establishment of some new management structures--the

Program Executive Officer (PEO), the OIPT. When Mary Lacey was appointed PEO she formed the working groups to look at the NSPS design. Were you a part of the "strategic engagement," as it was called? What did OPM do to help the DoD redesign NSPS and plan for a better implementation process in the spring and summer, maybe even into the fall of 2004?

A: From the very beginning, one of the principles behind the "strategic pause" was that DoD was going to more actively engage OPM. So George and I were at the very first meeting that Gordon England called. There had to be 50 people in the room because, while we were complaining about lack of involvement in NSPS, frankly, the military services were just as vocal inside the Department. They had not been engaged or consulted. They had concerns about flexibility and one size fits all as well as the substance of it. So you had senior people from all of the military services, the defense agencies, OPM, Charlie Abell, and Gordon England presiding over it. I think the "strategic pause" itself was maybe six, eight weeks in length. There was a series of working groups that addressed such things as employee involvement, communications, how the regulations were going to be drafted. We had not yet gotten to the substance of the regulations. Either I or senior staff of

mine participated in, I think, all of the various working groups during that period.

END OF SIDE A

Q: All right.

A: At the end of that the conclusions were sort of blindingly obvious. We all needed to work together, we needed to engage employees. We needed a communication strategy that would ameliorate some of Congress's concerns, some of the employees' concerns. Unfortunately a lot of these things had simply not been addressed in the early postenactment period. I think DoD was under the impression that all of this had been sufficiently socialized, they could just do it. I can't say enough about Gordon England's leadership. He got from the beginning--not because somebody had told him to--that we needed to revisit and revise the approach in all of these various areas. At the end of it there was a series of meetings and brief outs to him and other senior departmental officials. He then took a briefing--I think Mary Lacey may have been there, too, with him--to what amounted to at the time the Department's Board of Directors, the Secretary, the Deputy, the Service Secretaries, et cetera, to say, "Here's a way ahead." I

don't know whether Kay attended that meeting, I'm not sure she did. I don't remember whether George did. I think it was basically, "Look, this is internal DoD business." But we had seen, had fingerprints on and were comfortable with all of the slides. Essentially what Gordon England said at the beginning is, "You've got to sign off on these things before we can move forward." So literally a sea change occurred over the course of the six- or eight-week period from being held at arm's length to being actively embraced and participating. From that point with the working groups, and then something called the OIPT, an acronym--the title, I hate it, was the Overarching Integrated Product Team. Again, George and I were intimately involved. We were able to provide in as much detail as we thought appropriate the experience we had with Civil Service policy and rules, generally the experience we had gained through DHS. Before the DHS approach was rejected out of hand; now it was included as a data point. It wasn't a default, but it was, "All right, if that's the way DHS did it, that's not to say we can't do it differently, but let's have good reasons for doing it differently because people are going to ask, especially Congress."

Q: Now you're spending more time with NSPS, even to attend some meetings with the unions. There had been an effort,

outreach, with town hall meetings, focus groups. Did you participate in any of those?

A: There were two complementary efforts. There was basically a decentralized approach. One of the lessons we had learned from DHS, and frankly had been lauded for it by GAO, was that you've got to engage employees way up front. At DHS we actually went around the country to about a dozen places. In DoD they decentralized it. They basically gave each Service a focus group protocol and sent them out to do that, and we gathered the results. At the time, Mary Lacey had set up working groups that were dealing with each of the major pieces of NSPS--hiring and staffing, pay, job classification, labor relations, adverse actions. I had my key senior staff in every one of those working group meetings.

Q: How many people are now meeting with the DoD people?

A: During that spring--and the idea was to put a preliminary design together--I'd say probably 30 or 40 at peak periods. Three, four, or five in every working group, and there were three, four, or five working groups, then George and myself and others who were supporting us. The OIPT began meeting sometimes weekly. Again, a credit to Gordon England. You

had him, you had Charlie Abell, you had the Service Assistant Secretaries, such as Bill Navas.

A: Reggie Brown?

Q: He was there for a while. Not a religious attender. Mike Dominguez was there every day. You had one of the things that had been lacking, you had the senior career HR folks from the various departments in every one of these meetings and deeply involved on the working groups. As I said, the OIPT would meet oftentimes once a week, a couple of hours. Mary Lacey would tee up design issues: "Here's the issue, here are the pros and cons."

So that occurred during the spring, incorporating employee feedback. In the summer the union consultations began. DHS only had a couple of major unions, we were able to literally do it in a room with about a dozen, dozen-and-a-half people. We tried to learn from that experience and apply it to a much grander context. So the team that led the union consultations--Charlie Abell, Mary, a labor relations specialist with us, I can't remember his name, George, and me.

Q: Curry.

A: Yes, Tim Curry.

Q: George and you?

A: Yes. There was a backup, backbenchers behind us. These meetings were a spectacle because the unions for various reasons, including their own internal politics, found that they were unable to meet with us in the small group setting. Some of those discussions occurred, but the unions were very nervous about being accused--the big ones--of cutting a deal and then leaving the little ones in the dust. So we had several long, painful sessions in hotel ballrooms with every one of 70 different unions. They ranged from very small to AFGE, which is huge. We'd have to use microphones to be heard. Not exactly conducive to constructive dialog. As I said, we did have some smaller group sessions with a federal mediator during the course of the summer. We made progress on some issues.

I think the unions from the beginning--and this was in the run-up to the elections--sensed the change and were playing for time. They were hoping Congress would flip, one or both houses. They essentially took the position that, "We'll sit with you and we'll talk with you." But unlike the exercise with Homeland Security, where we were getting union input, in DoD we were filling the square with consultations, but we reached very, very little in the way of agreement.

Q: The draft NSPS regs were published in the *Federal Register* in February 2005. You helped write the regulations from scratch or sometimes you reviewed drafts that might have been sent over. Did OPM's reviews result in any major changes to the drafts right before they were published?

A: I'll move this upstream. Here's what happened. After the "strategic pause," we went into an intense design effort. Mary Lacey had a team just down the street here. She used terms that made us grimace a bit, basically that we were going "dark" until we had the design done, and that the union consultations were going to occur after the proposed rules were issued.

Q: Meet and confer with her after . . .

A: Meet and confer. Right. So I was one summer ahead of myself. In the spring, summer, fall of 2004, OPM had invested a lot of time with the working groups. Much as we did, in fact, exactly as we did with DHS, we spent many, many, many hours, mostly in the conference room at the Teddy Roosevelt Building on my floor going through these things line by line by god-awful line until we got them where we wanted them. There were a couple of hundred pages of regulations, and they have two parts to them. One was what we called "supplementary information," but it was in

fact the history of NSPS, the case for action, all of that. We labored over every word, drawing parallels with DHS where we could, drawing contrasts where we felt that was appropriate. Then you have the regulations themselves. Lots of internal discussions. I honestly can't remember a single major policy issue that required--maybe one, I'm not even sure of this--Kay James to intervene at the Gordon England or above level. The only one that came close was veterans' preference. I think when this got to Gordon England, he said, "What, are you crazy? We're not going to take on veterans' preference." Something like that.

We went from locked outside the door to intimate involvement and essentially co-drafting the regulations. Lots of discussion and debate, 20 or 25 people locked in a room for hours at a time crafting these things so that they could be ready for primetime. Frankly, one of the most difficult parts was getting all of the other stakeholders in government--particularly OMB--ready. I think if I recall correctly, we had the regulations drafted before the holidays, and it still took us until February to get all of the stakeholders--Justice Department and the White House--the White House in particular. They'll come back and play a role here when we actually get to the union discussions.

Q: When those draft regulations were published--and by the way, I thought that historical introductory material in the regs very helpful.

A: It made your job a little easier.

Q: It really did. It really was rich. I thought, whoever put that in there, it's very helpful.

A: I have to tell you, we had a projector, and we projected the Word documents on a big screen in a semidark room, and we literally would go over it line by line. We had half a dozen lawyers in the room and all of the reg writers from both DoD and OPM staffs.

Q: So the draft regs are published in the *Federal Register*, and I noted that you were publicly identified as the OPM point of contact, and your phone number was provided for all who wanted additional information.

A: Oh yes.

Q: Did the phone number ring constantly for 30 days? How were those inquiries handled?

A: We basically had one-and-a-half or two full-time staff people in the first several weeks responding. The good news, and I'll put this in quotes, is that the "commentors," were relatively few random off-the-street commentors. For the most part the comments were

orchestrated by various groups, including the unions, so that they knew where to go and where to write. One of the things that probably bears a footnote is that it's not clear whether anybody had seen the volume of comments that we got, and we actually came up with a special computer-based system for accepting them and then sorting through them.

Q: And then how many--58,000?

A: Sounds about right. More than 50,000.

Q: Most were negative, most were positive? How did it fall out?

A: It depends on whether you count them as votes or not. Or blocks. If you want to measure strictly quantity, the vast majority were negative. But the vast majority were orchestrated. So we got thousands of form comments; "I _____," fill in the blank from unions and from bargaining employees. We had to sort through all of those. We got positive comments from organizations like NAPA, and others. If you look at it as union and employee comments--negative. Management organizations, public interest groups--generally positive. Very few of them, frankly, did what comment period is supposed to do, and that is, "On line 27, you say 'x', it should say 'y'." The unions made submissions, and

they collaborated in putting, I think one or maybe two, large sets of comments that actually went line by line in response. Those were helpful in the ensuing meet and confer discussions. Largely it was just arguing over whether we should even do this rather than the actual content.

Q: What's the origin of that concept, "meet and confer"? That period starts after the close of the public comment period. Would you describe the whole meet and confer process you went through for NSPS working with the unions?

A: The best we were ever able to do is determine what meet and confer was not. If you have a continuum, and collective bargaining is on one end--and collective bargaining means you exchange proposals and you try to bargain in good faith and give and take and compromise, and then in the federal sector if you can't agree, somebody comes in and decides for you. We knew it wasn't bargaining, because it doesn't say "bargaining." We knew it wasn't "consultation," which was also a term of art, and actually had been in one of the early Executive Orders that established labor relations in the federal government. Consultation was, "We tell you what we're going to do, you tell us whether it bothers you or not, and we say 'thank you very much,' and we implement."

So some genius on the Hill--or maybe it was in our proposal
. . . .

Q: It was. I looked it up, it's in the DoD proposal that went over in April 2003.

A: I'm trying to remember whether it was in the DHS--

Q: Yes, I wonder if it was there.

A: I think that was the origin, and I think that came from Congress. The DHS experience was instructive. It was clear that, while we were going to subject ourselves to weeks and months of personal pain, at the end of the day, "meet and confer" did not mean we had to reach agreement. It was not bargaining in the traditional sense. So everyone was, from a policy standpoint, comfortable with what we thought the term meant. Not quite bargaining, where the unions had more say, not quite consultation where the unions had far less say. Something in between.

Q: Where are these meetings occurring?

A: We had three, maybe four, huge big sessions in two or three different hotel ballrooms. Then, as I said, we had a couple of smaller off-line sessions, but even the smaller sessions would end up having 30 people in them in some cases over here, where DCPMS is located.

Q: Who is on the OPM and DoD team? Was there a group of regulars?

A: It was George and me from OPM. Then we had backbenchers, depending on the topic. The big ballroom meetings were each set aside for a particular topic area, pay, labor relations, et cetera. We would prepare for it, have arguments laid out, and have staff experts who'd support them, whatever the topic of the day was. The Federal Mediation Service was introduced from the beginning, and they tried to serve as a moderator, with little success or impact. Towards the latter stages we reverted to a process that more closely resembled the terminal stages of collective bargaining, where the smaller group would get in a room with a federal mediator, and we'd sometimes meet together, sometimes separately. This was during that summer and early fall. I think the union always said, "Your language takes our interests into account," but I don't think they ever were willing to formally sign off on anything. I could be wrong on that. Frankly, we weren't all that anxious to have signatures anyway because then that started to look like collective bargaining. I'll plead a little bit of memory lapse there. I do know that on many of the mechanical issues we were not far apart. In fact, one could even characterize that we were in agreement. On the

really difficult issues, particularly Chapter 71, there was very little common ground. We had similar discussions inside the Executive branch. The exact issues may come to me as we're talking, but there were a couple of places in the adverse actions provisions, and a couple of places in the labor relations provisions, where frankly we said, the unions have made a good point. Or frankly, our arguments aren't as strong. Maybe we should give a little here. We found that OMB--and in this case there were some noncareer officials in OMB, particularly on the legal side--pretty much thwarted our efforts to move ever so slightly towards a common ground. Largely because in their view--and we had encountered similar difficulties with DHS--the law was so unequivocal, so crystal clear, that it was, "Why give? You don't have to give. If you don't have to give, why give?" So the discussions were cordial for the most part. No one--well, a couple of times we exchanged words, but that's the nature of those meetings. But ultimately, where we were looking to move this thing towards a middle ground--and in fact we did move towards a middle ground--none of that really was enough to persuade the unions to embrace this, either in whole or in part.

Q: After the final regulations were published in the *Federal Register* in November 2005, the continuing collaboration started with the unions to discuss the detailed implementing issuances. How did meet and confer meetings differ from the "continuing collaboration" meetings?

A: They were probably less productive because by that time I think the lawsuits had been filed. The unions took exception to the idea of implementing directives to begin with because, you may remember, one of the provisions of final regulations laid out how these things would occur and that was a process that the unions never would agree to. They would come essentially to protect their own interests, but even there they were reluctant to really get deeply engaged in the substance for fear that that would compromise their litigation against the very process itself. They didn't want to look like they were willing to accept it.

Q: Do these meetings look the same as "meet and confer"--at the same location, the same people talking to each other--or is it something else?

A: A subset of the same people, and smaller groups. But again, the same proviso that, to the extent any agreements were reached, the larger group had to come in and ratify it.

Where we had a core group of five people, I think the unions in those follow-on sessions had maybe a dozen people that constituted their core team.

Q: Were you selected to be on the Overarching Integrated Product Team, were you actually a member of that?

A: I think so.

Q: Were you a co-chairman?

A: No, George Nesterczuk was the co-chair.

Q: When he left--when George Nesterczuk goes out of the picture, you're still representing OPM?

A: I'm not sure. I think I left before George.

Q: In the *AFGE vs. Rumsfeld* lawsuit, the court of appeals would eventually rule *against* the unions, whereas the appellate court would rule in *favor* of the unions regarding the lawsuit involving Homeland Security's personnel system. How did the DoD and Homeland Security legislation differ so that the appellate courts ruled differently for the two departments?

A: I can tell you, more or less off the top of my head, how the language differed. I can't tell you why those differences made a difference.

Q: OK.

A: The DHS statute literally said DHS and OPM together could waive provisions of, among other chapters, 5 U.S. Code Chapter 71. But it also had that anomalous provision that said you had to preserve collective bargaining.

Q: Collective bargaining. Yes, OK.

A: The NSPS statute said that DoD and OPM could basically establish a new labor relations system for the Department, notwithstanding 5 U.S.C. Chapter 71, or words to that effect. We thought--this is the OPM group--we thought the DHS language was stronger. In part because the DoD authority eventually expired. It's hard for me to think of a word stronger than you can "waive" a chapter of the law. If I recall correctly, the court of appeals in DoD focused on essentially creating a new labor relations system for this interim period up to 2009 and drew a distinction. That's the best I can do. I was happy about it, and I sent a couple of gloating e-mails to my union colleagues because they had sent a number of gloating e-mails to me when we lost DHS. I can tell you that they were as mystified as we were because they thought--again, given that . . .

Q: They thought they were going to win.

A: Since they won DHS, they thought slam dunk on DoD.

Q: What are OPM's responsibilities for assessing and evaluating the NSPS? Were there any disagreements between OPM and DoD regarding methodology or evaluation criteria?

A: Responsibilities first. If I recall correctly, NSPS basically put a ceiling on the number of DoD employees that could be covered, subject to OPM evaluation. The law provided the broad sketch of that evaluation. I think OPM and DoD had to certify that DoD met certain principles before DoD could go beyond 300,000. There were discussions over what that evaluation would look like. I think DoD was looking at it as more of a high-level evaluation; OPM was looking at it as something more extensive. I left before they worked all of those issues out. Like so many others, it hadn't reached the point of contention where I think it would have required a call from either Kay James or Dan Blair as Director after Kay had left. I'm trying to remember the timing of this. I would characterize it as a robust debate over the nature of that evaluation, but not to the point where it was going to require us to go to our opposing corners and ring the bell.

A: Then bringing us up to more recent times, in January 2008 the President signed the National Defense Authorization Act. That act included NSPS-related legislation that the

unions regarded as a victory for the unions. How significant was the NSPS-related legislation in January 2008 to preventing DoD leaders from implementing the NSPS system in its entirety?

A: I do think it represented a setback. Here's my editorial opinion. One of the things we did not do well--on DHS first, and then NSPS--I think if we had moderated our goals, while the unions still would have contested the result, they wouldn't have had nearly as much ammunition. I'm not sure that that would have made any difference in the litigation--obviously not, since DoD won--but it may have vitiated some of the political impetus to change the law. There are some pretty aggressive positions in the NSPS regs, positions that were probably defensible when you had a Republican administration and a Republican House and Republican Senate, and you're in the early days of the Global War on Terror and the Iraq war. There was a lot of momentum then and people were feeling pretty good about the long-term prospects. I wish we had 20/20 hindsight, but I think more moderation in adverse actions, more moderation in the collective bargaining rules probably would have--I can't say *probably*--*might* have resulted in a different legislative result.

Q: How would you assess the prospects of the long-term success of NSPS?

A: I think the prospects are mixed. If I heard this correctly (and I hope I didn't), Secretary England said that DoD would move forward and begin engaging the unions, bargaining with the unions, over the details of the pay-for-performance system, and that whatever agreements they reached with the unions would be extended to the nonunion workforce. I think that's problematic because one of the things I've learned over that period of my life--and I wish it weren't so--is that the unions, no matter how much you engage them, whether you're consulting, meeting and conferring, or bargaining with them, no matter how much you give, they're not going to accept pay-for-performance. They are fundamentally opposed to it. As a result, unless there's a nuance here that I'm not getting, Secretary England's pronouncement is problematic.

A better bet I think--at least my hope--is that DoD will continue as it has, full-bore, implement NSPS in the non-union part of DoD, and then one of two results will happen. Either you'll end up with a two-tiered system. Many companies are like this. Their white collar workforces are not organized, and they're under one set of rules, and then

their blue collar workforces are organized, and they're under another negotiated set. They reconcile the two where necessary. I think and *hope* DoD moves in that direction. That creates some tension between the two, but it's not an unhealthy tension. The alternative is lowest common denominator. You let one drag you down and prevent you from moving forward. I think they have the authority to do what I've suggested. I don't think this most recent legislative change would prevent them from moving forward for the nonunion part of DoD. That would give them a critical mass, I think, and allow them to weather any attempt to revisit or retrench next year or the year after.

Q: What was the most significant help you personally, and then OPM, offered the DoD in designing and implementing NSPS? So this is looking back through all these years.

A: Without getting all that specific on my personal roles, I think OPM's involvement in forcing the "strategic pause" helped the final result in many subtle but important ways, both in terms of process and substance. I would not have had much confidence in the result if the path DoD had been going down had prevailed, where they just said, "Here it is, take it or leave it." I don't think they would have gotten as far as they have today, with almost 200,000

people now covered, if they had done that. I think the rails would have come off one side. I think even a Republican Congress would have choked and in effect were in the process of choking before the "pause." The letter, the other things that OPM as an organization did--my contributions to that, I think--did fundamentally change the direction and put it on a more even footing.

Ultimately in the substance of the regulations, I think OPM's push was to maximize flexibility. I think our influence in maximizing that flexibility, where that was important--on pay setting, whether DoD ever actually gets to use it--the rules provide for a lot of flexibility vis-à-vis the market. That's a place where expanding the flexibility would not have come about without OPM's involvement. Conversely, OPM also moderated DOD's push for flexibility in things such as veterans' preference. I'm a believer in veterans' preference. Does it make filling federal jobs harder, does it make filling DoD jobs harder? Yes. So be it. I think we owe it to ourselves to live with it. I think having us at the table as an alternative for Secretary England to hear, resulted in the decisions he made to not even go there. You can probably go down the list. I do think OPM also had a moderating influence--potentially moderating influence--on the collective

bargaining rules. But we were--collectively, this includes DoD--basically prevented from moderation. Secretary England was savvy enough to know that unless you give a little bit to the unions, they'll get you one way or another. They'll get you in court, in Congress, on the shop floor. His background would tell him that. We ran up against some ideological objectives from the White House that precluded a more pragmatic approach. So that's the best I can do off the top of my head.

Q: Finally is there anything else you would like to add to what we've discussed in the interview? Some topic that we should have brought up, or some point that you want to make?

A: When I was at OPM, another thing that I had the privilege of writing was basically OPM's way forward for Civil Service reform. In it we proposed a model for moving forward with Civil Service reform that does what DHS and DoD tried to do. That is, strike the right balance between agency flexibility on one hand, and governmentwide interests on the other. Not just in terms of principles like merit, but also in making sure the playing field doesn't get too far out of whack, that one agency doesn't have so much competitive advantage that the others just

can't compete. The experience we had in DHS, and then later in NSPS, led to this blueprint that we operationalized in something called the Working for America Act, in which I still have some pride of authorship. It takes all of those lessons learned and proposes them as probably the only viable way forward for reforming the entire federal Civil Service. We pretty much stayed away from collective bargaining rules in WFAA because that became the third rail. I still think that model will work. But in this case, the baby's gotten thrown out with the bathwater. The NSPS experience, particularly vis-a-vis the collective bargaining rules, which at the end of the day were never more--and this is a point I should have made an hour ago--were never more than a means to an end. It provided for them a window of increased management flexibility because the framers in the Administration and in Congress realized that you needed that flexibility to get the system in place. Once it was in place, then you could revert back to more or less traditional collective bargaining, but you would never get there if you had to go through all of that on the front end.

So much of the attention got put on that, still gets put on that, that the really important part of NSPS--the performance-based pay part, not the collective bargaining rules--the performance-based pay part, not the staffing stuff--the performance-based pay part--gets lost in the noise. It's remarkable that DoD is approaching 200,000 people under this system, and they're not leaving in droves. There's no mass exodus to report. There are fits and starts. I would declare that a victory. I hope that victory doesn't get lost or undone because of all of the other sideshows.

Q: Well, that's my list. And it's 1:35.

(break in tape)

A: One other feature of this. I think it's been a fairly significant benefit. Oh, we're about to run out?

Q: No, we should be . . .

A: OK. Back in my DoD days, one of the things that Secretary Cheney sent us out to do, and later Secretary Aspen and Secretary Perry (those were the Secretaries that I worked under) was to bring about much greater integration within the civilian side of the Department. I think one of the benefits of the whole NSPS exercise, the stormy relationship with DoD's unions notwithstanding, within the

Department and within the management structure of the Department, the NSPS exercise--even the bad parts--ultimately brought the Department together. It's much more cohesive today, particularly between the services, in part because they're all operating under more or less the same rules. One of the things I was charged with doing--and I got scars and bruises to show for it--was to bring about that consolidation back in the late 80s and early 90s with something called DMRD-973--have you heard of that? Defense Management Review Decision #973 consolidated the military Service personnel staffs.

Q: I was over at the Air Force. The Secretary of the Air Force's office was to merge with the Chief of Staff's office at one point.

A: That was Air Force's piece. This was under the Defense Management Review, which Deputy Secretary Don Atwood and Sean O'Keefe, who was comptroller, were running. Then Aspen picked it up with the Bottom-Up Review. It basically said, for human resources staff and policy, we want greater cohesion and integration. DMRD 973 created the Defense Civilian Personnel Management Service. It consolidated all of the staffs. It was supposed to establish a more corporate policy-making mechanism for personnel rules in

the Department. I can tell you that by the time I left DoD in '98 it had not. On the other hand, NSPS, especially the "post-strategic pause" NSPS exercise--and maybe it was because there was a common goal. But a common set of challenges brought the Department much more closely into alignment than it had been back in the early days when we were trying to force that through to only moderate success.

Q: Right. This is a follow-up question. Did you observe the differences among the services? Some would say "cultural differences." The way the Army, Navy, and the Air Force viewed personnel matters, and how they wanted to apply personnel rules. Can you see that as an outsider, or as someone who was close to personnel issues while you were within the department?

A: The cultural differences were (a) evident, (b) in most cases inexplicable, and (c) yes, I saw them first-hand.

End - NSPS-002 Dr Ronald P Sanders