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RETENTION, SECURITY CLEARANCES, MORALE AND OTHER HUMAN CAPITAL CHALLENGES FACING DHS

HEARING

BEFORE THE

SUBCOMMITTEE ON MANAGEMENT, INTEGRATION, AND OVERSIGHT

OF THE

COMMITTEE ON HOMELAND SECURITY HOUSE OF REPRESENTATIVES

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CONTENTS

Page

STATEMENTS

The Honorable Mike Rogers, a Representative in Congress From the State of Alabama, and Chairman, Subcommittee on Management, Integration, and Oversight 1
The Honorable Kendrick Meek, a Representative in Congress From the State of Florida, and Ranking Member, Subcommittee on Management, Integration, and Oversight 2
The Honorable Peter T. King, a Representative in Congress From the State of New York, and Chairman, Committee on Homeland Security 4
The Honorable G. Thompson, a Representative in Congress From the State of Mississippi, and Ranking Member, Committee on Homeland Security 5
The Honorable Sheila Jackson-Lee, a Representative in Congress From the State of Texas 30
The Honorable Bill Pascrell, Jr., a Representative in Congress From the State of New Jersey 28

WITNESSES

Ms. Kathy L. Dillaman, Associate Director, Federal Investigations Processing Center, Office of Personnel Management:
Oral Statement 17
Prepared Statement 19
Mr. K. Gregg Prillaman, Chief Human Capital Officer, U.S. Department of Homeland Security:
Oral Statement 6
Prepared Statement 9
Mr. Dwight Williams, Director, Office of Security, Department of Homeland Security:
Oral Statement 13
Prepared statement 14

PANEL II

Mr. John Gage, National President, American Federation of Government Employees:
Oral Statement 51
Prepared Statement 53
Ms. Colleen M. Kelley, President, National Treasury Employees Union:
Oral Statement 42
Prepared Statement 44
Professor Charles Tiefer, Professor of Law, University of Baltimore School of Law:
Oral Statement 68
Prepared Statement 69

APPENDIX

FOR THE RECORD

QUESTIONS AND RESPONSES

Mr. Gregg Prillaman and Mr. Dwight Williams 95

RETENTION, SECURITY CLEARANCES, MORALE AND OTHER HUMAN CAPITAL CHALLENGES FACING THE DHS

Thursday, May 18, 2006

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON MANAGEMENT,
INTEGRATION, AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to call, at 9:34 a.m., in Room 311, Cannon House Office Building, Hon. Mike Rogers [chairman of the subcommittee] presiding.

Present: Representatives Rogers, King (Ex Officio), Meek, Jackson-Lee, Pascrell, and Thompson (Ex Officio).

Mr. ROGERS. This meeting of the Subcommittee on Management, Integration and Oversight of the Committee on Homeland Security will come to order.

Today we are holding a hearing on a wide range of personnel challenges facing the Department of Homeland Security. Specifically, these include numerous vacancies in key positions, high turnover among senior officials, staff shortages in critical areas, inadequate training for certain employees, and potential lapses in security.

First let me welcome the witnesses and thank them for taking the time to be here today. We look forward to your testimony and your answers to our questions.

It has been over three years since the Department was established, yet senior officials continue to leave after short periods of time. I raised this issue with Secretary Chertoff over a year ago during a full committee hearing. At that time the Secretary agreed the number of vacancies is a growing problem. Yet today, we continue to see a number of key vacancies, including the Undersecretary for Science and Technology, the Assistant Secretary for Cyber Security, the Chief Financial Officer, the Chief Privacy Officer, and the Commissioner for Customs and Border Protection. Other key resignations are expected soon.

I am concerned this high turnover undermines the Department's effectiveness. It could also very well weaken our efforts to integrate the Department's many agencies and further erode employee morale.

Another personnel issue we will examine today is the Department's security clearance process. The Brian Doyle situation and criminal charges brought against other DHS employees raise a

number of serious questions regarding the Department's background investigation procedures and its monitoring employees' use of electronic equipment.

The recent controversy over the Shirlington Limousine contract revealed the Department does not conduct background checks on contractors. The result was that a convicted felon with poor past job performance received two separate contracts totalling $25 million. The Department's former Inspector General called this process, quote, "textbook poor", because it, quote, "failed to turn up readily available information about Shirlington Limousine's finances and performance." The Ranking Member and I submitted a document request to the Department regarding its contract with Shirlington Limousine, and we intend to hold a separate hearing on limousine contracts early next month.

During the past year, DHS employees have been charged with various offenses, including smuggling and harboring illegal aliens, kidnapping, drug trafficking, bribery, and assault with a deadly weapon. Given its critical role in helping secure our Nation, I believe the Department should have a higher standard when it comes to screening and monitoring its employees.

Today, we will hear just how secure the Department of Homeland Security is. And with that, I will now yield to my friend and colleague, the Ranking Member, the gentleman from Florida, Mr. Meek, for any statement he may have.

Mr. MEEK. Thank you, chairman. And I want to welcome our first panel and the second panel. And I am glad that we are having this hearing, this is something that we have talked about doing, and having the support of the chairman and the ranking member here this morning I think is very, very important. And I think it sends a very strong message that we are serious about what we are meeting on here today, and that is dealing with the morale at the Department and also management.

I requested this hearing, and I look forward to, Mr. Chairman, working with you. We both mutually came together and said this was very, very important.

I strongly believe that the personnel problems at the Department of Homeland Security deserve this committee's attention. I am not alone in this view. In the last few days, I have received dozens of letters from rank-and-file employees that have written us already prior to the hearing thanking us for having this hearing.

And Mr. Chairman, I have these letters right here. This is prior to the hearing. This is not even after the hearing, thanking us for having this hearing because it is the reason why this is so important towards our national security and morale at the Department.

Here are some of the things that they have said in these letters, and I have just taken a few of the excerpts from it. Individuals are saying, what worries me the most is that the Department of Homeland Security has created a Department that is driving away talented and committed employees. Morale is lower than it has ever been before. DHS management doesn't seem to have a clue about motivating employees. And employees are not receiving the right and fair treatment regarding the discipline, and their standard of living has been cut.

They tell me, also, that the training is inadequate; this is Department of Homeland Security employees. They also tell me that they lack the tools needed to fulfill the Homeland Security mission.

As a former law enforcement officer, I know firsthand how vital it is to be able to have the tools to execute your mission. Good morale is also critical for effective law enforcement in any organization, be it sworn or not sworn.

Good morale just doesn't happen. It certainly hasn't happened at the Department. Instead, the Department's workforce regularly express anxiety. The major source of this anxiety, to sum up it in a catchy name, is MAX HR. Under the new personnel program, workers have already had to adjust to a merge of 22 agencies into one and will have to see their long-standing civil service protection stripped away. In its place, they are calling this so-called new program Pay For Performance, in an appeals process that is totally housed within the Department of Homeland Security. I am well aware of the home court advantage. This strikes me as not only having home court advantage, but also having all the referees on the payroll.

Like many of the Department of Homeland Security employees, I have deep concerns about how fair these policies are and will be executed. I also, as a member of the Armed Services Committee, have authored legislation which will protect employees' rights at the Department of Defense based on their pay-for-performance personnel system. Fortunately, the courts have stepped in to block the Department of Defense from implementing their system as well. We cannot deny collective bargaining rights by ignoring Congressional intent. What is to stop a manager from treating an employee that they don't want to give a raise to from shifting from a volunteer to a worker in an extra shift?

I think it is very, very important, Mr. Chairman, that we continue to focus on these issues as not only you outlined in your opening statement, but we also focus on making sure that we have morale. Morale, in my opinion, will equal individuals staying at the Department, working on behalf of the American people and protecting our country in a way that they sought out to do in the beginning, not have in-house personnel issues, not have mismanagement, and a lack of oversight that has not only embarrassed the Department of Homeland Security, but the employees that work within the Department.

As we look at it as Members of Congress, and definitely in the Oversight Committee, it is very, very important that we do not let these rank-and-file employees down, and we work on the issue of attrition at the Department because it is not good for national security. It is not good for the Department of Homeland Security, and it is not good for the American people.

So I look forward to hearing from our first panel and our second panel as we start to get into the workings of the Department of Homeland Security, and hopefully, we will get our questions answered in this hearing and in future hearings. Thank you, Mr. Chairman.

Mr. ROGERS. I thank the gentleman.

The chair is now pleased to have with us and pleased to recognize the chairman of the full committee, the gentleman from New York, Mr. King, for any statement he may have.

Mr. KING. Thank you very much, Chairman Rogers.

Let me commend you at the beginning for all the work you have done as chairman, especially on this very vital issue that we are dealing with today, because to me it goes to the very heart of some very, very significant issues affecting the Department of Homeland Security. For instance, there are just three of the matters that we covered today that I have a particular interest in. One was the New York City subway alert last year in which, to me, the Department acted in many ways extremely improperly. As the City of New York was acting in a very appropriate way to increase surveillance on the subways, alerting the people to what possibly could be happening, we had members of the Homeland Security Department selectively leaking to newspapers, undermining the Police Commissioner and the Mayor of New York, trying to diminish the nature of the threat, and speaking against them in a way which created dissension. It created confusion among the people, and it was entirely inappropriate. At the same time they were doing that, there were other officials in the Department of Homeland Security who were advising their neighbors and friends and relatives to leave the city and alerted them because of the serious nature of the threat. I realize that two employees have been suspended for that, and there are proceedings against them. I think it goes again to the heart of the Department, where you have, on the one hand, senior employees undermining the conduct of the Police Commissioner of New York and the Mayor of New York, and at the same time having employees of the Department improperly and illegally notifying their friends and neighbors as to what they thought was going to be a serious threat. That, apart from the fact that there was selective consideration being given to relatives of employees of the Department, also ran the risk of alerting terrorists that we were on to what was happening. This was classified information which should not have been released, and to me, it is very important we find out exactly how that happened and why, and what action ultimately is going to be taken against those who did leak that information.

Also, in the case of Brian Doyle, you are talking about a person in a very senior position who has been charged with very serious sexual offenses which are bad enough in themselves, but also, it would have left him open—if he had in fact been dealing with someone who was a foreign agent or somebody involved with organized crime or somebody involved with the criminal syndicate—to blackmail where he could have provided very important information. Yet it turns out that in his prior employment he also had similar experiences as far as dealing with pornography. I want to know what the hiring practices were, why that previous experience was not revealed, and how he was allowed to be hired.

Thirdly, of course, is the whole case of Shirlington Limousine, which is bad enough when we have the backdrop of kickbacks, gambling, prostitution, and bribery. But it is problematic that a company such as this, owned by someone with a criminal background, with a very poor performance record in its previous con-

tracts, could have been given a contract where they would have access to top ranking officials in the Department of Homeland Security whom they would be driving around. They would be able to overhear conversations, have access to what was going on, where they were going, whom they were meeting with. All of this, again, raises very serious questions.

I look forward to the testimony this morning to see what procedures will be in place to prevent similar instances from happening in the future, because again, the Department of Homeland Security is different from many other Federal departments in that the nature of what you are dealing with literally involves the life and death of American citizens. We can't be allowing people with known sexual histories who have been removed from previous jobs to get high-ranking jobs and security clearances in the Department of Homeland Security. We can't allow people in the Department to be undermining local police officials while at the same time other members of the Department are leaking classified information. And we certainly can't be allowing companies who are owned by criminals and have a poor performance record to be given contracts where they would have access to high-ranking officials in the Department of Homeland Security.

So I look forward to the testimony. And to Chairman Rogers, again, I thank you for the effort and initiative that you have shown in this matter. And I yield back the balance of my time.

Mr. ROGERS. I thank the gentleman. And we are similarly happy to have the Ranking Member of the full committee with us today, the gentleman from Mississippi, Mr. Thompson. And I now recognize him for any statement he may have.

Mr. THOMPSON. Thank you very much, Mr. Chairman. And like the Chairman of the full committee, I am happy that we have finally gotten around to this subcommittee hearing which I know my ranking member has been very anxious on having.

There is no question that the procurement process at DHS is flawed. There is no question the morale of its employees is a real concern of ours. I hope that from the testimony offered today, we can look at preparing some solutions for it.

I would hate for this committee to have to get in the business of micromanaging DHS in its personnel and procurement practices, but unless we can see greater improvement, Mr. Chairman, I am not real certain that we won't have to get into that business.

I am concerned about the number of vacancies that continue to exist in FEMA. We are 13 days from a new hurricane season, and we have only 73 percent of the appropriated staff of FEMA on board at this point. So when I am told that we are prepared for the next hurricane season, I wonder, how can we be prepared with only 73 percent of the staff that is required to run the agency?

So I am concerned about it. I am concerned that every survey of employees I see ranks DHS at or next to the bottom of every survey in terms of employee morale; something is wrong with that picture. I hope we can get some insight as to why employee morale is where it is.

I can go on and talk about individual turnover and other things related to TSA and other things, but Mr. Chairman, let me compliment you and the ranking member of the subcommittee for put-

ting together the hearing. I look forward to the testimony of both panels. I am sure it will be enlightening at best, and I yield back.

Mr. ROGERS. I thank the gentleman.

And he is right, we don't want to have to be micromanaging, but as we have assured Department officials over the last year and a half and want to continue to assure everybody, we will be zealous in our oversight in this committee. This is a very real problem that is alarming to us, and we look forward to hearing some substantive ideas as to how we are going to resolve these concerns.

So with that, I would like to tell any other Members that we will allow their opening statements to be submitted for the record.

We are pleased to have with us today two panels of distinguished witnesses. Let me remind the witnesses that your entire statements will be submitted for the record, and we would ask that if you would like to summarize those,to try to keep your remarks within 5 minutes so that we can spend as much time as possible probing specific questions that Members may have for you after your statements.

Mr. ROGERS. The Chair now calls up the first panel and recognizes Mr. Gregg Prillaman, Chief Human Capital Officer for the U.S. Department of Homeland Security. We look forward to your statement, and thank you for being here, Mr. Prillaman.

STATEMENT OF K. GREGG PRILLAMAN

Mr. PRILLAMAN. Thank you, Chairman Rogers, Ranking Member Meek, and members of the committee. I do appreciate being here and having the opportunity to talk with you today about the Department's human capital initiatives and programs.

I was appointed at the Department as the Chief Human Capital Officer on September 7th of last year after more than 30 years in the human capital field as a professional in the government and, in the private sector, as an executive and as a management consultant. Through the years, I have worked with more than 30 government agencies in a wide array of private sector firms, not-for-profits and State and local governments in every area of human capital management. That is my field. That is my area of specialty. And even though I have only been with DHS now for 8 months, I think I have a pretty good sense of the complexity of the organization and many of the issues and challenges that DHS is confronting.

As a Chief Human Capital Officer, I provide direction and oversight for all elements of the Department's human capital programs, including policy, strategic planning, learning and development, recruitment, performance management, compensation, benefits, employee relations and other areas. I also lead the Department's Human Capital Council, which is made up of all the human capital directors of all the various components. And I am active as well in the government-wide Council of Capital Officers as sponsored by the Office of Personnel Management.

DHS is a very complex organization from a human capital perspective. It is the third largest Federal department with nearly 185,000 employees located across the United States and around the world. Each of our components has a very different culture and character, and our work force is more varied than most other agen-

cies. We have employees in more than 220 different occupations, ranging from law enforcement officers and firefighters to doctors, economists, intelligence officers, pilots, scientists, airport screeners, accountants, Secret Service agents, systems integrators, plant and animal inspectors, and we even have morticians. It is a very complex organization.

As you can imagine, recruiting, managing and retaining high quality talent is a major challenge for us, and the overarching goal in human capital—the organization that I lead—is to support our managers and employees by providing an environment where they have clear roles and responsibilities, challenging assignments, the tools and training they need to perform their work, opportunities to grow, and rewards that are commensurate with their contributions.

DHS was created, as you all know, by the combination of 22 different organizations, which makes it one of the largest mergers and acquisitions in the history of the Federal Government. I believe most corporate mergers and acquisition specialists would say that it takes 5 to 7 years or longer to work through the throws of a merger to end up with a smooth-running, well-integrated organization. Accordingly, at this point, DHS is about 3 years into a 7-year journey. While the Department has made great progress in many areas, it still has challenges to overcome before it becomes a fully integrated organization.

One of our major challenges involves the disruption any merger creates and the resulting impact on employee morale. It was apparent from the results of OPM's 2004 Federal Human Capital Survey that a number of employees at DHS were concerned about the organization. As you know, about 150,000 employees government-wide responded to a survey that was designed to measure their satisfaction with their departments and agencies across government.

The survey results for DHS showed many areas of strength, including employee commitment to the Department's mission and goals, but it also showed significant opportunities for improvement, especially in the areas of performance culture, leadership and work experience. DHS's score placed it 29th out of 30 large agencies in the survey.

We believe that time and becoming comfortable with the new organization will reduce some of the concerns that the employees voiced. But we also believe that improving organizational understanding, communications, management skills and a support infrastructure will also help. To this end, we have created a Federal Human Capital Survey Response Team within DHS which is comprised of representatives of each component. As we examine the survey results, we are reviewing leading practices inside and outside the Department and developing a plan of action for each component to improve staff satisfaction within the organization.

We also believe that the elements of MAX HR, a new human capital system we are implementing, will have a positive impact on morale. For example, the new performance management system is designed to clarify each employee's role and responsibility and give them a set of clear performance objectives that are tied to the Department's overall mission objectives. The emphasis of the program is on clarity and line of sight so employees understand exactly

where they fit in the organization and what their priorities should be.

More importantly, the system also requires that managers and supervisors go through a training program to improve their skill in communicating with employees, making assignments, setting performance objectives, providing feedback and coaching to employees, receiving feedback from employees, and providing fair and balanced evaluations at the end of the year about employee performance. There is an old adage that employees join an organization and they leave a manager. Our intention is to train our managers and supervisors in how to better manage employees so that we don't have employees leaving because their first-line supervisors aren't doing a good job. To date, we have put more than 8,000 managers and supervisors through the training program and should train another 6,000 employees by the end of 2006.

We have also made progress across the Department. We have—and progress particularly in integrating those 22 organizations into one organization. We have a Human Capital Council that meets regularly, which is made up of the human capital representatives of all the various components. We are working together to try to solve our collective problems. We are integrating technology across the Department, replacing some 144 Legacy HR systems that didn't talk to each other very well with organization-wide systems. We have a single payroll system at this point which in fact replaced eight that were across the Department. We are putting in a web-enabled time and attendance system, a new Microsoft empower system which is going to be our core for HR IT, a new e-recruitment system, learning management system, performance management system. We are doing what Fortune 500 corporations have been doing for the last 15 years, and that is trying to create an integrated technology-based human capital system.

We have also improved communications I believe across the Department. We are doing better on the President's Management Agenda. I think we are making progress in a number of areas there. And we are also making progress on MAX HR. The performance management elements of MAX HR have already been deployed for 4,500 managers, supervisors and employees at the headquarters, Coast Guard, Immigration and Customs Enforcement, and our plan is to continue rolling out performance management through this new system that we think will link employees better to the organization's objectives in training managers. We plan to have that system in place for as many as 15,000 employees during fiscal year 2007. And we are making progress also on building a pay-for-performance system and a broadband classification system that we think will provide managers better flexibility in hiring and motivating employees and will give employees a chance to be rewarded in more commensurate fashion with their contributions across the organization.

I see that I am out of time, but I would be happy to answer any questions that the committee may have.

[The statement of Mr. Prillaman follows:]

PREPARED STATEMENT OF K. GREGG PRILLAMAN

Chairman Rogers, Ranking Member Meek and members of the Committee: Thank you for the opportunity to be here today to discuss the current state of the Department's human capital initiatives and programs.

I was appointed as the Department's Chief Human Capital Officer on September 7, 2005 after more than 30 years in the Human Capital field as a professional, an executive, and a management consultant. I spent the first thirteen years of my career as a career Federal employee with the U.S. Information Agency and the Voice of America, five years as the Corporate Director of Human Resources with a federally-funded corporation, two and one-half years as the Director of Human Resources for a county government, and ten years as a management consultant with leading Human Capital consulting firms. Through the years I have worked with a wide array of Federal, state and local governments, corporate, and not-for-profit organizations and have gained significant experience in every major area of Human Capital management.

As the Chief Human Capital Officer, I provide direction and oversight for all elements of the Department's Human Capital programs, including policy, strategic planning, learning and development, recruitment, performance management, compensation, benefits, union and employee relations, and other areas. I also lead the Department's Human Capital Council which is made up of the Human Capital Directors for the various Department components, and am an active participant on the government-wide Council of Chief Human Capital Officers. Even though I have only been with the Department a few months, I believe I have gained a sound understanding of the complexities of the organization and the challenges we face in recruiting, retaining, and supporting the high-quality workforce this Department needs to achieve its critical mission.

The Complexity of the Workforce

I would like to first address the complexity of the DHS workforce.

DHS is the third-largest Federal Department, with nearly 185,000 employees located across the United States and around the world. Each of our components—large and small—has a distinct culture and character. The DHS workforce is also more varied than most other federal agencies, with employees in more than 220 different occupations—ranging from law enforcement officers and firefighters to doctors, economists, intelligence officers, pilots, scientists, airport screeners, accountants, Secret Service agents, systems integrators, plant and animal inspectors, and many, many others—even morticians.

As of April 1, 2006, we have more than 40,000 Coast Guard military personnel; 40,500 transportation screeners; 17,800 customs and border protection officers; 11,500 border patrol agents; 9,600 criminal investigators; 2,000 IT professionals; 1,700 police officers; 1,300 attorneys; 800 engineers; and 700 contract specialists.

Last fiscal year, our workforce:

- Processed more than 430 million pedestrians and passengers into the United States; 560,000 of who were denied entry,
- Processed 29 million trade entries and collected $31.4 billion in revenue,
- Seized nearly 600 lbs of narcotics at ports of entry and nearly 1.2 million lbs of narcotics between ports of entry,
- Apprehended over 15,000 aliens who were either fugitives or in violation of immigration law.
- Since 2003, arrested more than 6,600 child predators as part of Operation Predator; deporting more than 3,400 from the U.S.,
- Arrested more than 2,600 human smuggler and traffickers,
- Effectively trained over 47,000 law enforcement agents at the Federal Law Enforcement Training Center,
- Conducted more than 26,800 port security patrols, 5,800 air patrols, and 26,000 security boardings,
- Processed 7.3 million immigration benefits applications, and
- Performed 35 million background security checks on persons seeking immigration benefits.

Recruiting and staffing for this varied workforce continues to be a major challenge. In fiscal year 2005, we processed thousands of job applications and hired more than 11,500 new employees. In fiscal year 2006 to date, DHS has hired over 3,500 employees.

The dedicated men and women who make up the Department's incredibly wide-ranging workforce are essential to achieving the organization's mission on a daily basis. Our overarching goal in human capital is to support them by providing an environment where they have clear roles and responsibilities, challenging assign-

ments, the tools and training they need to perform their work, opportunities to grow, and rewards that are commensurate with their contributions.

Organizational Transformation

We have to remember that when DHS was created by combining 22 different organizations, it was one of the largest "mergers & acquisitions" to ever take place in the Federal government. I believe most corporate merger and acquisition specialists would say that it takes five to seven years (or longer) to work through the throes of a merger to end up with a smooth-running, well-integrated organization. Accordingly, at this point DHS is only three years into a seven-year journey. While the Department has made great progress, it still has challenges to overcome before it becomes a fully-integrated organization.

One of our major challenges involves the disruption a merger creates and the resulting impact on employee morale. It was apparent from the results of the 2004 Federal Human Capital Survey (FHCS) that a number of employees at DHS were concerned about the organization. As you know, about 150,000 employees, government-wide, responded to a survey designed to measure their satisfaction with their departments and agencies. The survey results for DHS showed many areas of strength, including employee commitment to the department's mission and goals, but also significant opportunities for improvement, especially in the areas of performance culture, leadership, and work experiences. DHS' scores placed it twenty ninth out of the thirty large agencies in the survey.

We believe that time will reduce some of the concerns that employees voiced, but we also believe that improving organizational understanding, communications, management skills, and the support infrastructure will help. To this end, we created a Federal Human Capital Survey Response Team comprised of representatives from each DHS component to examine the survey results, to review leading practices inside and outside the Department, and to develop a plan of action for each component to improve staff satisfaction with the organization.

We also believe that elements of MAX^{HR}, the new human capital system we are implementing, will have a positive impact on morale. For example, the new performance management system is designed to clarify each employee's roles and responsibilities and give them a set of clear performance objectives that are tied to the Department's overall objectives. The emphasis of the program is on clarity and "line of sight" so employees understand exactly where they fit in the organization and what their priorities should be.

The system also requires all managers and supervisors to go through a training program to improve their skills in communications with employees, making assignments, setting performance objectives, providing feedback and coaching to employees, receiving feedback from employees, and providing a fair and balanced evaluation of the employee's strengths and weaknesses at the end of the year.

Areas of Progress

Given the enormity of the Department's day-to-day operations, the Chief Human Capital Office is striving to implement innovative human capital policies and processes designed to better support the workforce. I am pleased to report that we have made significant progress in integrating our human capital priorities, programs and systems.

FY 2005 marked the first full performance year under the DHS Human Capital Strategic Plan. Significant progress was made on each of the four major goals included in the plan:

- Optimizing shared services
- Improving hiring
- Fostering a "team DHS" culture
- Implementing robust human capital programs

In addition, we have created a formal, replicable business process for validating and updating the plan's goals and strategies to ensure that they are responsive to the rapidly changing environment that is today's world. As a result of this business process, we developed a comprehensive set of human capital activities for FY 2006, and progress toward them is well underway.

Specific examples of our accomplishments include:

- **Human Capital Council:** we established the Human Capital Council to represent component interests and provide strategic guidance and support for all human capital priorities and initiatives.
- Technology: we are at the forefront of technology solutions, and are among the first Federal agencies to roll out the eOPF (Official Personnel File), under the auspices of the e-Gov initiative. We have also successfully consolidated duplicative human capital management and tracking systems, including reducing eight legacy payroll systems to one. In addition, we are making significant

progress in implementing several new, enterprise-wide systems, including WebTA, EmpowHR and a Learning Management System. We are currently soliciting proposals for an e-Recruitment solution.

• **Communications:** we centralized human capital communication efforts to ensure employees receive consistent messaging on human capital priorities. We established a new intranet web page for the Chief Human Capital Office. This new site provides detailed information on a variety of program areas within the office and includes the latest information on the development of the MAX^{HR}: program.

• **Progress on the PMA:** we have made important progress on the human capital elements of the President's Management Agenda, including:

- *Human Capital* Strategy: In FY 2004, the Department issued its first Human Capital Strategic Plan (HCSP), which was aligned with the Department's Strategic Plan. The HCSP identified four primary objectives: realizing operational and hiring efficiencies and effectiveness, optimizing shared services, fostering a "Team DHS" organizational culture, and implementing robust HC programs. These objectives were based largely on input from the employees, supervisors, and managers across the Department as well as from the HC community. On an annual basis, the Department's HC Council reviews the progress that has been made towards these objectives and identifies very specific goals for the upcoming year, ensuring that the entire line of business is engaged in the realization of these goals. These are not only my goals, and those of the employees of the Office of the Chief Human Capital Officer, they are the shared goals of the entire DHS HC community.
- *Talent:* DHS developed a Workforce Plan in FY05 and we have conducted a comprehensive analysis of the staffing and competency gaps within our Information Technology (IT) workforce and developed an implementation plan with milestones and performance measures to close those gaps. Currently we are assessing the competencies within our Human Resources (HR) workforce and will develop a plan by the end of June to close targeted competency gaps within that occupation.
- *Leadership and Knowledge Management:* DHS is in the process of hiring an SES-level Chief Learning Officer within the CHCO to coordinate and oversee the Department's learning and development programs and infrastructure. In addition, DHS has selected a vendor to develop a common Learning Management System for the Department, which will improve our ability to monitor learning and development activities. The CHCO is also working to design a homeland security professional development program to unify training and readiness throughout the public and private sectors.
- *Performance Culture:* DHS expanded deployment of its new performance management program beyond Headquarters to managers and supervisors in the U.S. Coast Guard and Immigration and Customs Enforcement last month—the latest milestone in implementing a performance-based culture throughout the Department.

• **Progress on MAX^{HR}**: we have made progress in implementing a new, performance-based human capital system, called MAX^{HR}, to drive results across the Department.

- *Performance management:* a new MAX^{HR} Performance Management Program has been designed and is now deployed to more than 4,500 employees in headquarters, the U.S. Coast Guard, and Immigration and Customs Enforcement. A cornerstone of the MAX^{HR} Performance Management Program is the link between individual employee performance goals and the strategic goals of their component and the department. Under MAX^{HR}, individual performance goals are identified and documented in the Performance Plan and Appraisal using the MAX^{HR} e-Performance Tool. By the end of 2006, coverage should be expanded to a total of 18,000 employees across the department.
- *Broadband compensation system:* the design of the new pay banding system is nearing completion, with proposed occupational clusters and pay bands developed for each cluster. The design is currently being vetted by the Human Capital Council and others.
- *Pay-for-performance:* the new pay system is on track for implementation beginning in February 2007. Rollout of the pay system will continue in phases through calendar year 2008.
- *Labor relations/Adverse actions and Appeals:* the U.S. District Court for the District of Columbia enjoined DHS from implementing the labor relations provisions of the MAX^{HR} regulations and a new mitigation standard.

We remain hopeful that the Court will allow us to move forward with these provisions, which will help us to manage, recognize and reward our employees more effectively, while preserving their fundamental rights and due process.

- **Providing high quality and effective training for our staff, supervisors, managers, and executives:** we have successfully trained a critical mass of DHS employees.
  - In fiscal year 2005, DHS trained (directly or via distance learning) approximately 3 million people, including DHS employees, firefighters and other federal, state and local government employees.
  - In fiscal year 2006, approximately 8,000 supervisors and managers have received performance leadership training to prepare them for the transition to MAX^{HR}, with an additional 6,000 to be trained by October 2006.

Organizational Challenges

Managing the Department's human capital infrastructure and building the MAX^{HR} system are not without challenges. In line with the DHS Human Capital Strategic Plan, we continue to forecast and plan for the challenges we will face moving forward—and develop innovative ways to manage our human capital resources to respond to these issues. Some of these key challenges we face include:

- **Continuing the integration of a diverse workforce with strong legacy cultures into one, cohesive team with a shared culture**
- **Recruiting and retaining a high-performing workforce**
  - In fiscal year 2005, DHS hired over 11,500 employees.In fiscal year 2006 to date, DHS has hired over 3,500 employees.
  - DHS' average performance against the OPM 45-day hiring model during FY 2005 was 44 days. (This includes 3 steps: rating, ranking to certificate delivery (1–15 days); selection (2–7 days); and extension of job offer (1–3 days).
- **Managing the impending "Retirement Wave" at DHS**
  - By 2009, 14% of the DHS workforce will be eligible to retire. While the overall number is lower than other agencies, the alarming fact is that 49% of SES level employees and 37% of GS–15 level employees will be eligible to retire. This "leadership drain" is an issue that we are addressing in partnership with OPM.
  - Some components have much higher retirement eligibility rates, including the U.S. Secret Service. By 2010, 91% of their SES level employees will be eligible to retire, and 75% of their GS–15s.
  - The average age of DHS employees is 42 vs. the federal average of 46.
- **Improving morale and commitment across the organization**
- **Improving the quality and speed of HR servicing across the Department**

Leveraging technology to improve operational efficiencies and economies of scale in the Human Capital area

  - Implementing enterprise-wide, core HR systems, including EmpowHR, eOPF, WebTA, ePerformance, eLearning and eRecruitment
  - Standardizing business processes where appropriate
  - Maximizing resources through shared service initiatives
  - Eliminating/reducing redundancies
  - Clarifying roles and responsibilities
- **Continuing to drive toward creating a high-performance culture that can be a model for the rest of the government**

Conclusion

Although we still have a lot of challenges before us, DHS has made real progress in integrating human capital programs and advancing innovative, new ways of both managing and supporting the Department's most valuable assets—its people. Moving forward, our strategic human capital priorities include:

- Playing a key role in achieving the Department's mission objectives
- Driving high-quality HC customer service across the Department
- Implementing MAX^{HR}, focusing on creating a high-performance culture across the Department
- Expanding functional integration and fostering a "Team DHS" culture
- Creating efficiencies through shared services and streamlined business processes
- Leveraging technology to improve access, service, speed and efficiency
- Driving innovation and change
- Creating a model CHCO office and healthy relationships with clients and stakeholders, both internal and external

Thank you for your leadership and your continued support of the Department of Homeland Security and its human capital management programs. I would be happy to answer any questions you may have.

Mr. ROGERS. Thank you, Mr. Prillaman, for your statement.

The Chair now recognizes Mr. Dwight Williams, Director of the Office of Security for the U.S. Department of Homeland Security for any statement he may have.

STATEMENT OF DWIGHT WILLIAMS

Mr. WILLIAMS. Chairman Rogers, Congressman Meek and distinguished members of the subcommittee, I appreciate the opportunity to appear before you today to discuss the process and procedures by which the Department of Homeland Security issues security clearances.

My name is Dwight Williams, and I am a career executive serving as a chief security officer for the Department. My office's two primary responsibilities are to provide security policy oversight and guidance to DHS, and to provide direct security, support and services to those DHS components without a dedicated security office.

Prior to becoming the DHS chief security officer, I spent 4 years at U.S. Customs and CPB as a director of the Security Programs Division, and more than 20 years with the Washington, D.C., Metropolitan Police Department in a variety of assignments culminating in the director of the Office of Professional Responsibility.

The Department's mission to lead the National Effort to Secure America requires that only trustworthy, reliable individuals granted access to classified information are placed in sensitive positions. DHS therefore vets all of its employees to a level appropriate to their duties and responsibilities. Like other executive branch agencies, DHS conducts its vetting process in accordance with numerous executive orders and regulations. Through the DHS Chief Security Officers Council, which is comprised of the CSOs from the major components, as well as other key security officials, my office ensures that the policy formulation and implementation are consistent with these regulations.

The CSO Council also provides a forum for senior security officials to address issues affecting the DHS security community, and to develop and implement a common vision and strategic direction for security within the Department.

Prior to giving you an overview of the Department's security clearance process, I would like to briefly distinguish between Federal employees and contractors.

DHS vets all contractors with staff-like access to its facilities. With respect to contractor clearances, DHS participates in the National Industrial Security Program under which the Office of Personnel Management conducts background investigations in connection with DHS classified contracts. I would also like to point out the difference between suitability for government employment and eligibility to hold a security clearance.

Suitability, which considers an individual's character, reputation and trustworthiness in relation to the specific job position, is a requirement for all government employment, regardless of whether the employee is eligible to access classified information. Although specific suitability standards vary according to component mission

and position, some factors, such as criminal or dishonest conduct, apply across the board.

Obtaining a security clearance at DHS, as elsewhere in the executive branch, involves several steps. First, employees must have a need for access. Second, they must successfully undergo a comprehensive background investigation appropriate for their level of access. With the exception of the Secret Service, CPB, ICE and the components serviced by the Office of Security, other DHS components are required to use OPM to conduct these various background investigations. For components with delegated background investigation authority, DHS has contracted with several companies to provide this service, enabling us to reduce the time it takes to complete investigations without compromising quality or comprehensiveness.

Third, the investigation is adjudicated according to the 13 government-wide adjudicated guidelines. Trained and experienced adjudicators review the entire investigative file, take into account mitigating information and, in some cases, request a follow-up interview before deciding whether to recommend denying, granting or revoking a security clearance.

Finally, employees are briefed on the responsibilities for protecting classified information, sign a nondisclosure agreement acknowledging those responsibilities and agree to abide by all appropriate security requirements.

Reciprocity, which is mandated by both statute and executive order, requires DHS to accept an individual's current security clearance without reviewing the file or performing additional checks, only limited exceptions to this policy are permitted. It is important to emphasize, however, that reciprocity does not apply to suitability determinations. New suitability determinations can appropriately be made if an employee of another agency applies for a position at DHS or if an employee changes positions within the Department.

Over the past 3 years, the demands within the Department and across the executive branch for personnel security clearances have increased significantly. The Department is continuing working to evaluate and assess ways to approve the process, such as by applying enhanced continuing evaluation measures to our cleared population. Through this and similar initiatives, DHS is committed to providing the most effective and highest quality personnel security services.

Thank you, again, Mr. Chairman, for the opportunity to speak to you today. And I will be happy to answer any questions from you or the other members of the subcommittee.

[The statement of Mr. Williams follows:]

PREPARED STATEMENT OF DWIGHT M. WILLIAMS

Introduction

Chairman Rogers, Congressman Meek, and distinguished Members of the Subcommittee:

I appreciate the opportunity to discuss the process and procedures used by the Department of Homeland Security (DHS) for determining employee suitability and issuing security clearances. My name is Dwight Williams, and I am a career executive serving as the Chief Security Officer (CSO) for the Department. My office's two primary responsibilities are to provide (1) security policy oversight and guidance to

DHS and (2) direct security support and services to DHS components without dedicated security offices. Prior to becoming DHS CSO, I spent four years at legacy U.S. Customs and Customs and Border Protection (CBP) as the Director of the Security Programs Division, and more than 20 years with the Washington, D.C. Metropolitan Police Department in a variety of assignments culminating as the Director of the Office of Professional Responsibility.

The Department's mission to lead the unified national effort to secure America requires that only trustworthy and reliable individuals are granted access to classified information or placed in sensitive positions. The Department owes this duty to its employees, other government agencies, and the American people. As a result, the Department imposes the highest personnel security standards for its employees and has established first-rate programs to meet these standards.

Background

The efficiency and effectiveness of the personnel security vetting processes directly affects each DHS component. The Department thoroughly vets all of its employees as well as state, local, and private-sector partners who require access to classified information.

Various executive orders and regulations govern the process by which DHS and all other executive branch agencies determine employee suitability and grant access to classified information. The DHS Office of Security, through the Chief Security Officers' Council—which is comprised of the chief security officers of the Department's major components as well as other key DHS security officials—ensures that policy formulation and implementation are consistent with applicable regulations. The CSO Council also provides a forum for these senior DHS security officials to address issues affecting the DHS security community and to develop and implement a common vision and strategic direction for security within the Department.

The Clearance Process

Prior to discussing the Department's security clearance process, it is important to briefly note two distinctions: between federal employees and contractors and between suitability for government employment and eligibility to hold a security clearance.

Employee vs. Contractor Clearances

DHS vets all contractors with staff-like access to its facilities. With to respect to contractor clearances, DHS is a signatory to and participates in the National Industrial Security Program (NISP). The NISP was established by Executive Order 12829 to serve as a single, integrated program for the protection of classified information released to or accessed by industry. The President designated the Secretary of Defense as the Executive Agent for the NISP. Until the recent transfer of its personnel security investigative mission to the Office of Personnel Management (OPM), the Defense Security Service (DSS) conducted investigations for personnel security clearances in support of DHS classified contracts, grants, or related activities and monitored compliance with safeguarding requirements. OPM has now largely assumed that responsibility. The Defense Industrial Security Clearance Office (DISCO), a field element of DSS, continues to adjudicate and issue personnel security clearances to DHS contractors.

Suitability vs. Eligibility

A suitability determination, which considers an individual's character, reputation, and trustworthiness in relation to the specific job position, is a requirement for all government employment, regardless of whether access to classified information is involved. The Office of Security ensures that components meet minimum suitability requirements; specific suitability standards beyond those requirements are the prerogative of the individual agency, enabling it to tailor them to its missions and positions. Although DHS's myriad missions and components preclude a single one-size-fits-all approach to suitability, some specific factors such as criminal or dishonest conduct apply across the board.

Criteria for Establishing Eligibility to Access Classified Information

As mandated by executive branch agencies, the primary criterion for granting access to classified information is an employee's "need for access," which is defined as a determination that an employee requires access to a particular level of classified information in order to perform or assist in a lawful and authorized governmental function..

In addition to possessing a "need for access" on a regular, on-going basis, employees must be granted a security clearance based upon a favorable adjudication of an appropriate background investigation, be briefed on their responsibilities for protecting classified information, sign a nondisclosure agreement acknowledging those responsibilities, and agree to abide by all appropriate security requirements.

Background Investigations

Each DHS employee with a clearance is subject to a comprehensive, thorough background investigation, although different clearance levels require different levels of review. For example, to be eligible for a Top Secret clearance an employee must undergo a Single Scope Background Investigation (SSBI). For a Secret clearance and below, the scope of the investigation varies, but includes various database checks, criminal history record checks, and other sources as necessary to cover specific areas of an individual's background. In addition to the initial investigation, employees with clearances are required to submit to periodic reinvestigations. (Periodic reinvestigations are conducted every 5 years for Top Secret and 10 years for Secret clearances.) With the exception of the Secret Service, CBP, Immigration and Customs Enforcement (ICE), and the DHS components serviced by the Office of Security, all other components are required to use OPM to conduct these various background investigations for their employees. The Secret Service uses its own employees to perform these investigations while CBP, ICE, and the OS have contracted with several companies to provide this investigative service. Process improvements and other management efficiencies have enabled my office to reduce the amount of time it takes to complete investigations without compromising quality and comprehensiveness.

Security Clearance Adjudication

The DHS component security offices plus the Office of Security adjudicate background investigations for the employees they service according to the 13 government-wide adjudicative guidelines listed in 32 CFR Part 147. The adjudication process is designed to allow the careful weighing of these guidelines known as the "whole person concept." In other words, adjudicators review the investigative file, take into account mitigating information, and in some cases request a follow-up interview before deciding whether to recommend denying, granting, or revoking a security clearance. Adjudicative decisions are, to a certain extent, unavoidably subjective; however, decisions are based on the interpretation of the adjudicative guidelines noted above. These standards include an assessment of the individual's allegiance to the United States, personal conduct, involvement with drugs and alcohol, and financial stability. My office has instituted several measures to help ensure adjudicative quality and consistency. Adjudicators receive both in-house and external training, and are mentored by senior personnel security specialists. In addition, DHS has established adjudicator roundtables to share information among components. Finally, the executive branch is currently reviewing the adjudicative process and actions of 23 agencies to identify training gaps or other variances that could adversely affect determinations.

Reciprocity

The principle of reciprocity has been mandatory for executive branch agencies for more than a decade. The Intelligence Reform and Terrorism Prevention Act recently reiterated and expanded upon this requirement. Reciprocity mandates acceptance of equivalent personnel security clearances and accesses across federal agencies. In other words, if a prospective employee holds a current clearance as a result of previous military or other government service, the Department is required to accept this clearance without additional investigation. The reciprocity principle also governs personnel transfers among DHS components. In fact, recently issued executive agency-wide guidance prohibits agencies from requesting that individuals with existing security clearances complete a new security questionnaire; reviewing the existing questionnaire; reviewing the existing background investigation for the individual; or initiating any new investigative checks. Only limited exceptions to this policy are permitted, such as clearances granted by waiver or on a temporary or interim basis; when an individual is being considered for access to a program of a sensitivity level different from that of the existing program; or if there is known or existing derogatory information. It is important to emphasize that reciprocity does not apply to suitability determinations. As mentioned above, agencies are permitted to match specific suitability standards to their missions and positions. As a result, new suitability determinations can appropriately be made if an employee of another agency applies for a position at DHS (or if a DHS employee changes positions within the Department).

Conclusion

Over the past three years, the demands within the Department (and across the executive branch) for personnel security clearances have increased significantly. Through internal DHS coordination initiated by my office as well via the inter-agency Security Clearance Oversight Group, the Department is continually working to evaluate and assess ways to improve the process of conducting and adjudicating background investigations and granting security clearances. For example, we are ex-

ploring ways to apply enhanced continuing evaluation measures to our cleared population. To this end, the Department is conducting pilot testing of the Defense Department's Automated Continuing Evaluation System (ACES). ACES provides automated database checks on cleared individuals between their regularly scheduled periodic reinvestigations. Through this and similar initiatives, DHS is committed to providing the most efficient and highest-quality personnel security services.

Thank you again, Mr. Chairman, for the opportunity to speak to you today. I will be happy to answer any questions from you or the other Members of the Subcommittee.

Mr. ROGERS. Thank you thank you very much, Mr. Williams.

The Chair will now recognize Ms. Kathy Dillaman, Associate Director for the Federal Investigations Processing Center at the Office of Personnel Management.

Welcome, Ms. Dillaman. We look forward to your statement.

STATEMENT OF KATHY L. DILLAMAN

Ms. DILLAMAN. Mr. Chairman, and members of the subcommittee, thank you for the opportunity to testify before you today on the services the Office of Personnel Management (OPM) provides to the Department of Homeland Security (DHS) in support of their personnel security clearance process and the DHS' Human Capital Strategic Plan.

OPM's mission is to ensure the Federal Government has an effective civilian workforce. As part of this mission, OPM is responsible for conducting different levels of background investigations for the various types of positions in the Federal Government to ensure the individuals meet the Government's suitability and security clearance requirements.

At OPM, the division responsible for conducting background investigations is our Federal Investigative Services Division, headquartered in Boyers, Pennsylvania. This division supports over a hundred Federal agencies with thousands of security offices worldwide. Our automated processing systems and vast network of field investigators handle a high volume of investigations. In fact, we processed over 1.4 million investigations last year.

OPM currently conducts 90 percent of the background investigations for the Federal Government. The remaining investigations are conducted by agencies who assume this responsibility pursuant to law or through a delegation approved by the Office of Management and Budget. OPM and DHS share responsibility for the background investigations required by DHS. Under an OMB approved delegation, DHS conducts background investigations on specific positions within the agency. For other departments or positions within DHS, OPM conducts various levels of investigation. All levels or investigation include searches of national record repositories. The minimum level includes letters of inquiry to employers, local police departments, schools and personal references to confirm the subject's background claims and to obtain information on the person's suitability for employment. More extensive investigations are conducted on DHS employees who require Top Secret Security clearances or are in positions of higher risk to Public Trust. These investigations include personal interviews conducted by a field agent with the subject of the investigation and personal sources, as well as record checks of local police departments and other State or local record repositories. OPM conducted over 700 minimum-level

investigations, and over 18,000 extensive investigations for DHS for the last fiscal year.

Investigators are instructed to identify and interview the best sources available at each location with extensive knowledge of the subject's background and character. The investigations conducted by OPM are designated to identify issues that may raise a concern about the subject's suitability for employment or eligibility for a security clearance.

The Office of Personnel Management works with agencies to implement the Human Capital Initiative of the President's Management Agenda. We help agencies align human capital management strategies with mission, goals, and organizational objectives and integrate human capital planning into agency strategic and performance plans.

The Homeland Security Act of 2002 authorized the Secretary of Homeland Security and the Director of OPM to develop a new human resources management system for the Department, providing specific flexibilities in the areas of pay, performance management, classification, disciplinary matters, labor-management relations and appeals. Flexibilities granted to DHS comprise the largest transformation of civil service regulations in 40 years.

MAX HR, as the new human resource management system is designated, represents a major organizational and cultural change for DHS employees, and DHS has invested heavily in training and communication. To date, DHS has trained over 7,700 managers and supervisors on the new performance management system. The training focused on establishing clear performance expectations aligned with organizational goals that are cascaded throughout the organization; creating a stronger link between performance and pay; promoting a continuous learning environment; creating new opportunities for leadership development; and enabling the Department to continue to attract the best and brightest, to reduce skills gaps in mission-critical occupations, and to sustain and improve diversity.

OPM will continue to work with DHS and support the Department every step along the way to ensure successful implementation of MAX HR. As we do so, we remain ever mindful of our Government-wide responsibility to ensure compliance with merit system principles and to hold agencies accountable for their human capital practices. That is why our new Strategic Plan calls for OPM to conduct an independent program evaluation of the Department's new HR system with the assessment beginning this fiscal year and extending into fiscal year 2007.

Mr. Chairman, I would like to note that I am joined this morning by Marta Perez, OPM's Associate Director for Human Capital Leadership and Merit Systems Accountability Division who will be available to answer any questions the subcommittee may have for OPM on human capital issues at DHS.

That concludes my remarks. I am happy to answer any questions you may have.

[The statement of Ms. Dillaman follows:]

PREPARED STATEMENT OF KATHY L. DILLAMAN

Background

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify before you today on the services the Office of Personnel Management (OPM) provides to the Department of Homeland Security (DHS) in support of their personnel security clearance process and the DHS? Human Capital Strategic Plan.

OPM's mission is to ensure the Federal Government has an effective civilian workforce. As part of this mission OPM is responsible for conducting different levels of background investigations for the various types of positions in the Federal Government to ensure the individuals meet the Government's suitability and security clearance requirements. The investigations range from the minimum level of investigation required for low risk public trust positions or positions that require a Confidential or Secret clearance, to extensive field investigations for high risk public trust positions or those that require a Top Secret clearance.

At OPM, the division responsible for conducting background investigations is our Federal Investigative Services Division (FISD), headquartered in Boyers, Pennsylvania. This division supports over 100 Federal agencies with thousands of security offices worldwide. Its automated processing systems and vast network of field investigators handle a high volume of cases. In fact, we processed over 1.4 million investigations last year.

Currently, OPM conducts 90% of the background investigations for the Federal Government. The remaining investigations are conducted by agencies who assume this responsibility pursuant to law or through a delegation approved by the Office of Management and Budget (OMB).

Background Investigations for the Department of Homeland Security

OPM and DHS share responsibility for the background investigations required by DHS. Under an OMB approved delegation, DHS conducts background investigations on specific positions within the agency. For example, Customs and Border Protection and the U.S. Secret Service conduct investigations on positions within their agencies. DHS also conducts investigations that are required by regulation for such positions as airport workers who need access to secure areas of the airport, HAZMAT drivers, and, more recently, port workers operating at major U.S. ports. OPM has no role in these investigations.

For other departments or positions within DHS, OPM conducts various levels of investigation ranging from the minimum National Agency Checks with Inquiries (NACI) investigation to the most extensive field investigation, the Single-Scope Background Investigation (SBI). All levels of investigation include searches of national record repositories, such as the national fingerprint-based criminal history check through the FBI, a search of the FBI and DoD investigative indexes, review of military records, credit checks, birth verification, and a check of immigration and naturalization records. The minimum level includes letters of inquiry to employers, local police departments, schools, and personal references to confirm the subject's background claims and to obtain information on the person's suitability for employment. More extensive investigations are conducted on DHS employees who require Top Secret security clearances or are in positions of higher risk to Public Trust. These investigations include personal interviews conducted by a field agent with the subject of the investigation and personal sources at previous employment locations, residences and educational institutions. Agents in the field also conduct record checks of local police departments and other state or local record repositories. OPM conducted approximately 700 minimum level investigations and over 18,000 more extensive investigations for DHS so far this fiscal year.

Investigators are instructed to identify and interview the best sources available at each location with extensive knowledge of the subject's background and character.

The investigations conducted by OPM routinely identify individuals with unsatisfactory employment records, criminal records, chronic financial problems, drug or alcohol problems, or a history of violent behavior.

From April 1, 2005, through March 31, 2006, OPM conducted over 72,000 investigations for DHS.

DHS' Human Capital Strategic Plan

The Office of Personnel Management works with agencies to implement the Human Capital initiative of the President's Management Agenda. We help agencies align human capital management strategies with mission, goals, and organizational objectives and integrate human capital planning into agency strategic and performance plans.

DHS' Human Capital Strategic Plan addresses the Department's human resource management challenges and provides a sound foundation for managing a workforce of some 180,000 employees. It also establishes the framework for the Department's human resources modernization effort, known as MAX HR.

The Homeland Security Act of 2002 authorized the Secretary of Homeland Security and the Director of OPM to develop a new human resources management system for the Department, providing specific flexibilities in the areas of pay, performance management, classification, disciplinary matters, labor-management relations, and appeals. Flexibilities granted to DHS comprise the largest transformation of civil service regulations in 40 years.

MAX HR began in early 2003 with the formation of a joint design team comprised of agency, OPM, and labor union representatives. A comprehensive two-year design and outreach effort culminated in the February 1, 2005, publication of final regulations for the new human resource management system. Since February 2005, detailed implementation plans have been developed for each of the six human capital areas. Certain labor relations, adverse actions, and appeals provisions of the MAX HR program have been challenged in a lawsuit filed by a consortium of DHS labor unions. On August 12, 2005, the U.S. District Court for the District of Columbia enjoined DHS from implementing the labor relations portion of the new regulations, as well as a new mitigation standard established by the regulations. The case was recently argued on appeal before the U.S. Court of Appeals for the DC Circuit.

Pay and performance management provisions of the new system are not covered by the unions' lawsuit and continue to move forward. The performance management program under MAX^{HR} has been deployed to non-bargaining unit employees in headquarters, supervisors and managers in Immigration and Customs Enforcement (ICE), and the U.S. Coast Guard. In July of this year, coverage will be expanded to supervisors and managers in the Federal Law Enforcement Training Center (FLETC). By the fall, supervisors and managers in the Customs and Border Protection and U.S. Citizenship and Immigration Services (USCIS) will be covered as will employees in the U.S. Secret Service. Finally, supervisors and managers in the Federal Emergency Management Agency (FEMA) will be covered in spring of 2007.

MAX HR represents a major organizational and cultural change for DHS employees, and DHS has invested heavily in training and communication. To date, DHS has trained over 7,700 managers and supervisors on the new performance management system. The training focuses on:

- establishing clear performance expectations aligned with organizational goals that are cascaded throughout the organization;
- creating a stronger link between performance and pay;
- promoting a continuous learning environment;
- creating new opportunities for leadership development; and
- enabling the Department to continue to attract the best and brightest, to reduce skills gaps in mission-critical occupations, and to sustain and improve diversity.

OPM will continue to work with DHS and support the Department every step along the way to ensure successful implementation of MAX HR. As we do so, we remain ever-mindful of our government-wide responsibility to ensure compliance with merit system principles and to hold agencies accountable for their human capital practices. That is why our new Strategic Plan calls for OPM to conduct an independent program evaluation of the Department's new HR system with the assessment beginning this fiscal year and extending into FY2007.

Mr. Chairman, this concludes my remarks. I am happy to answer any questions you or the members of the Subcommittee may have.

Mr. ROGERS. I want to thank all of you for your statements.

As was represented earlier in opening statements by me and the Ranking Member, this hearing was announced at the request of the Ranking Member a couple of months ago. He recognized, as did I, that we have a very real problem in DHS with recruitment, retention, and morale, and it is disturbing. That was the purpose for this hearing being called. And we would like to—I know he and I have talked extensively about this—we would like to keep the focus of this hearing on that. Although, as you are all aware, since this hearing was scheduled, we have had some really noteworthy examples of security problems in DHS. I have referenced them in my opening statement—Doyle case and the Shirlington Limousine

case, and I am sure you will have some questions about that. But my threshold area of inquiry has to do with recruitment and retention, particularly at the upper level positions.

You heard me say some of the positions where we are having problems retaining folks. A few others where we have vacancies right now are the Undersecretary for Management, the Undersecretary for Science and Technology, the Assistant Secretary for Cyber Security, the Chief Financial Officer, the Privacy Officer, the Commissioner for Customs and Border Protection, the Assistant Secretary for Legislative and Intergovernmental Affairs, and the Chief Information Officer in Immigration and Customs Enforcement.

I read all of your statements. I didn't see anywhere any answers as to why we have this problem. Are we not paying enough? Are we working people too hard? Somebody tell me in plain language, why it is happening and what we can do I am also on the Armed Services Committee and DHS runs a close second to DOD's ability to give bureaucratese. I want to speak plainly about, how we got here, and what we do to get out of this situation. And let's start left to right and just hear your thoughts in plain language about how we got here and what we can do to get out of this hole.

Mr. Prillaman.

Mr. PRILLAMAN. Thank you.

DHS is a very interesting organization. Before I came back to the government, I was a management consultant. I worked with a lot of corporations and government agencies and other places, and recruitment and retention in the executive branch is always hard in any organization.

Mr. ROGERS. Why?

Mr. PRILLAMAN. Well, it is mostly hard if you have an organization in transition; it is hard to attract and keep people in an organization that is going through the kind of disruption that has occurred at DHS because of the amalgamation 3 years ago. As I said earlier, we are only 3 years into this.

What I see, as a relative newcomer of DHS, is a lot of very tired people. I think there are rank-and-file employees who were charged up. They had high energy. They had their adrenaline pumping. After 9/11, they were highly motivated. And they are tired. They worked very hard the last 3 years. Janet Hale, the Undersecretary of Management, is leaving after 3 difficult years of trying to pull that Department together.

The Department is trying to fill vacancies, and I think we are filling them with very talented people. There is a new CFO, David Norquist, who is pending confirmation. Ralph Basham, as you know, the head of Secret Service, has been selected to be the commissioner of CPB; he is pending confirmation. Dave Paulison, who is acting right now as the head of FEMA, is pending confirmation.

Mr. ROGERS. And I would make the point that that position was offered to three people who turned it down before Dave Paulison came back and said, I will take it. It is hard to get people to take these jobs. Why? Go ahead, I am sorry.

Mr. PRILLAMAN. Well, it is a very good question. It is a hard organization to work in. DHS has a wonderful mission that I think attracts a great many people to come to it. Why I came to DHS is

the mission of the organization, the opportunity to make a difference; I think that is what attracts a lot of people in. But it is a hard organization because the infrastructure is not yet complete; it is still feeling its way in terms of the amalgamation.

My sense is that DHS will do much better during the next 3 years than it has done during the last 3 years. As people are now becoming—my sense anyway, again, as a consultant, coming and looking at the organization initially, I think people are beginning to become stabilized. The organization is beginning to become more stable. The bad press that DHS has gotten during the course of the last year post-Katrina has not made it a more attractive place for many people.

The kind of people you will get to come to DHS are people who want a challenge, that are willing to come in and take on an organization that needs to have significant additional change made. People who are maintenance managers won't be interested because it is not comfortable. But if you want people to come in who will make a difference who are willing to take a challenge, I think that is the kind of talent we are going to find for our positions.

Mr. ROGERS. I can see my time is expired.

The Chair now recognizes the Ranking Member, Mr. Meek, for any questions he may have.

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

And I can tell you, there are a number of issues, Mr. Prillaman, that we have to deal with, not only here in this committee. One good step is that this committee has moved from a select committee in the last Congress to a standing committee, and there was bipartisan support for it to happen. And hopefully, as we educate ourselves as Members of Congress, just not stepping in and out of the Department of Homeland Security functions, I think the American people will be better served in the borders and everything, the airports, you name it, the mission will become a lot stronger. We know that many of you signed up for defending the country. It is almost like enlisting and being deployed in some instances.

But I wanted to ask you a question about MAX HR. As you know, in my opening statement—and I am glad the Chairman made it abundantly clear that we will have a hearing on some of the other issues that are facing the Department of Homeland Security and this Congress, because we have the obligation of oversight here, so we have to ask the uncomfortable questions, but hopefully, the outcome will bring about some change.

You said in your statement—I had an opportunity to read all of your statements—but Mr. Prillaman, you mentioned, on page 4 and page 5, you were talking about the revolution of this MAX HR, and I think that it is important. You mention something as it relates to training to improve the skills and communications with employees, making assignments and setting performance objectives. And you mentioned this Human Capital Council. Can you please elaborate very quickly on who sits on that Human Capital Council?

Mr. PRILLAMAN. The human capital representatives from all the various components around DHS. There are seven human capital offices that provide day-to-day services, plus many of the components who don't have their own human capital office have human

capital representatives. And it is a body of 18 to 20 people there, and we meet on a regular basis, at least every 2 weeks.

Mr. MEEK. I am sorry, because my time is limited, I am going to cut in and out, but you will keep up; you are doing good.

Human capital, 20 representatives, are there any rank-and-file folks a part of this council?

Mr. PRILLAMAN. No, they are not part of the council.

Mr. MEEK. Okay. I know the Chairman said that he is concerned with the managers, and the reason why we can't keep managers is that they feel that they have a lack of training. When I talked about the letters—and I know that you are going towards the training issue. When I talked about the letters before the hearing—that I have right here for the perusal of anyone that wants to see them—saying thank you for having the hearing because this is a major problem, and we are trying to work through a—I would just say a human resources issue at the Department of Homeland Security and we don't have the folks that account for the over a hundred-plus thousand employees at the Department of Homeland Security, and there is a council that is making some decisions and implementing plans on how we are going to build morale, and they are not represented there, I think really sets a major problem and maybe something the Department wants to look into and re-evaluate because it may be a problem, may be uncomfortable for someone to be sitting there at the table and ask a question saying, well, you know, I know we are getting all this training and we have 7,700 individuals and managers that are trained, but for those of us that you are trying to help to keep us on, this is how we feel, and this is the reason why this won't work or this could work better. And I am pretty sure that all the Department folks are willing, no matter if they punch in and punch out, they sign in or sign out or they come in at 10:30 in the morning—if you know what I am talking about—and leave at 4, they all jointly believe in the mission of the Department of Homeland Security.

So it may be helpful as you look at this MAX HR that I have a lot of questions about—the chairman and I serve on Armed Services. I just watched the Department of Defense go through a major court issue with their similar program because of the application of it and the unfairness of it. So when we talk about attrition, I think that we have to talk about the whole management question.

I want to ask you also another question. You have been on for eight months in your capacity; am I correct?

Mr. PRILLAMAN. Yes.

Mr. MEEK. Your predecessor, how long?

Mr. PRILLAMAN. 3 years.

Mr. MEEK. So from the beginning, you are the second person. That is good. I hope you are able to stay to see the implementation of the program, maybe not MAX HR—I mean, I have my personal opinions about that—but making sure that we cut down on attrition.

One last question, 7,700 people train, managers, how many of those individuals still with the Department? Have you all looked at that? Training in MAX HR.

Mr. PRILLAMAN. I don't have that exact number, but I would say 95 percent at least would still be with the Department.

Mr. MEEK. When did the training start?

Mr. PRILLAMAN. It started last September.

Mr. MEEK. So it is fairly new.

Mr. PRILLAMAN. Yes.

Mr. MEEK. I will wait until the second round of questions.

Mr. Chairman, thank you, I yield back.

Mr. ROGERS. Thank you.

The Chair now recognizes the chairman of the full committee, Mr. King, for any questions he may have.

Mr. KING. Thank you, Chairman Rogers.

And I will follow with your request that we deal more with the practices, procedures, and policies than with actual details of individual cases. But I would like to refer to the Doyle and the Shirlington cases, not so much the detail of those cases per se but what they say about the Department itself. My concern is that there is not a full appreciation of the unique role, of the unique mission that the Department of Homeland Security has. For instance, when an employee is screened for a security clearance, unlike the FBI and the CIA, my understanding is that there are no polygraph tests given at the Department of Homeland Security. And for instance, a man like Doyle who in his previous employment—reports are he was asked to leave because of an experience of using pornography in the work site. Now maybe that in and of itself would not keep him from getting a subsequent job, but we are talking about somebody with a security clearance. It seems to me that that is the type of thing that should be looked into with great detail, and I am wondering how something like that would not have been found. If he had been given a polygraph test, is that something that would have come up? Again, because to me primarily, not to address the personal nature or the actual nature of what he supposedly did, but given how in his position he could be vulnerable to blackmail, susceptible to blackmail, would the FBI or CIA have conducted a polygraph? And if they would have done that, why doesn't Homeland Security since you are dealing with issues of life and death?

Similarly with the limousine case, just using that as another example, from what I understand, there were serious problems with previous contracts that the company had. The owner of the company has a criminal record, and yet the company is given access to driving all but the two highest officials in the Department of Homeland Security. So it seems to me there is not enough of an appreciation of the unique security demands that should be on employees at the Department of Homeland Security. I mean, not to minimize any other Federal employee, but you are talking about a Department which is entrusted with preserving the lives of millions of Americans. It seems to me you should have higher standards as far as how you give somebody a clearance, how you give them access, whether they are employees or even contractors, where you have people with criminal records driving around and having access and listening to conversations of high-ranking DHS officials. To me, it just, unless you can convince me otherwise, shows there is not a real appreciation of just how serious this job is and the standards that employees, certainly those given security

clearances, should be held to. And I really would ask any of the three of you to try to respond to that.

Mr. WILLIAMS. Well, briefly, I think discussing contractors, we do investigate contractors with staff-like access, and that is access similar to what I have or any other employee. That would not include necessarily the owner of a company who may not have any real access to DHS or the compound or the people involved. Traditionally—

Mr. KING. If I could just interrupt you there for a moment, please. Even if the owner himself does not have access, if he is a criminal, it would, to me, be reflected in the type of people he would be hiring and the type of operation he may be running, or the type of person who himself could be susceptible to being reached by someone who is trying to obtain information. So I would ask you, why don't you look into the background of the owners?

Mr. WILLIAMS. Traditionally, I don't think that has been done. I don't know that we do have the authorities to do that—

Mr. KING. Again, if I could interrupt you there. Let's assume that everything you have done up until now has been done by the book. Should the book be changed? Should you in the future look into—and if you need authority, should you ask us to give you that authority?

Mr. WILLIAMS. I am not sure if there is a real security concern. Again, I think everything we do we take a measure of risk and we have to decide how far we want to take the security. For instance, if J.W. Marriott provides the cafeteria employees at the DHS lunch hall, do we have to do background investigations on the board of directors? I don't know. Traditionally that has not been the road that we have taken with security. Again, it has pretty much been focused on those with access to the specific individuals.

Mr. KING. Well, if I could just say, as Chairman of the full committee—and I think there is concurrence on both sides of the aisle—I think the standards should be raised. To me, there is somewhat of a difference between a cafeteria employee and someone who is driving the highest-ranking officials of the Department around from meeting to meeting, knowing whom they are meeting with, knowing what their agenda is, listening to their conversations in the car. That to me is a little different from persons working behind the counter in the cafeteria. And to me, this is not rocket science. I mean, cab drivers can probably bring down governments if they kept track of what Officials are doing. If you have someone who knows the schedules—I mean, if they are told who they are driving, where they are driving them to, where and who they are going to be meeting with, they hear conversations on the phone—to me, this is something that should be looked at. And I wouldn't trivialize it by saying, well, traditionally, we haven't done it. I mean, we are talking about, as we see in this case now, this involves kickbacks, gambling, prostitution, and we are talking about people who drove highest—all but the two highest-ranking members of the Department around. To me, that is a clear security breach. And to me, the fact that it was always done this way in the past is no reason it should be done this way in the future. And I recommend to the Chairman and the Ranking Member of both sides of the aisle that we just take a new perspective and a new

look at what security procedures should be and what security attitudes should be at the Department.

Mr. ROGERS. I thank the Chairman.

And I do assure him and everybody today, we are going to have a hearing on this Shirlington Limousine case and talk broadly, not only about the case, but broadly about our background checks, our procurement policies and things that we need to do better, because we certainly can do a lot better than what we have seen in recent weeks with that case as well as with the Brian Doyle case.

With that, I am now proud to recognize the Ranking Member of the full committee, Mr. Thompson, for any questions he may have.

Mr. THOMPSON. Thank you very much.

Mr. Prillaman, I am told that we have seven entities within DHS that have their own personnel systems. Is that reasonably correct?

Mr. PRILLAMAN. Seven entities that have their own personnel offices that provide services.

Mr. THOMPSON. So in your position how much authority from the human capital side do you have over those departments?

Mr. PRILLAMAN. I have authority to oversee their work in terms of evaluating the quality of the work that is done, and I have the authority to write policies that could have departmentwide application, but I did not have day-to-day supervision of those departments. We have a dotted line relationship in DHS from the individual human resources office to the CHCO as opposed to a hard line.

Mr. THOMPSON. So those seven agencies do their own thing.

Mr. PRILLAMAN. They operate pretty independently.

Mr. THOMPSON. Yet they are within DHS.

Mr. PRILLAMAN. They are.

Mr. THOMPSON. I guess the next question is have you recommended change in that?

Mr. PRILLAMAN. No, I have not.

Mr. THOMPSON. Do you plan to recommend change in that? You have got seven chiefs out there.

Mr. PRILLAMAN. There are seven chiefs, but not seven unguided missiles. The Human Capital Council I mentioned a while ago

Mr. THOMPSON. We are trying to put an organization together, and I can't see seven different personnel chiefs accountable to no one really making the organization as robust as we want. But I appreciate your candor on it.

Ms. Dillaman, explain to me the limit to which you deal with security clearances or anything and whether or not you contract that process out at all.

Ms. DILLAMAN. Yes, sir. First of all, we provide the background investigation, which is one element of the agency's security clearance process. OPM's configuration, I have six companies under contract who provide investigative services, plus I have a broad base of Federal employees who also provide the same services. In total, I have 9,000 resources devoted to the background investigations program.

The Department of Homeland Security would identify the individuals who require a background investigation, and then, depending on whether it was a position where they have a delegation to conduct their own or OPM provides the investigative service, the

product is exactly the same. The investigation, if OPM is going to conduct it, would be requested by my agency. We would conduct the required level, and there are different levels of investigation depending on the level of clearance or access.

Mr. THOMPSON. Thank you. So if a guy—not a guy, a person had a previous sexual problem, as we know, would the contractor have pick it up, or would you have picked it up?

Ms. DILLAMAN. If it were an investigation that included field coverage, an agent would conduct interviews of the individuals who had close association with the subject at places of employment, or the residence.

Mr. THOMPSON. If a person were being considered for employment, and your shop would do it or contract it out?

Ms. DILLAMAN. My shop would do it. I may use a contracted agency, but that agent would be reporting to OPM, cleared and trained the same as his Federal counterpart.

Mr. THOMPSON. So the reference that Chairman King made about the case we know so much about, how could we miss someone with a history of felonies?

Ms. DILLAMAN. Sir, with a history of felonies, the law enforcement records checks include a check of the FBI's criminal base records. They also include records checks of State and local law enforcement agencies wherever the subject lived, worked or went to school during the coverage period of the investigation.

I would like to say felonies could not be missed because it is a biometric check of the FBI if the record is on file with the FBI. With all the investigations OPM conducts, almost 10 percent of the background investigations identify a criminal history record on file with the FBI for the subject.

Mr. THOMPSON. So if you identified for the Shirlington Limousine contract—or you wouldn't look at that?

Ms. DILLAMAN. If we were conducting the background investigation on individuals who were employed under that contract, then every investigation we would do would include a fingerprint-based criminal history check, and the results would be provided to the adjudicating agency.

Mr. THOMPSON. Did you do one on the owner of the Shirlington Limousine contract?

Ms. DILLAMAN. I have no idea, sir.

Mr. THOMPSON. Can you check for the committee to see whether or not you did one and report back to us?

Ms. DILLAMAN. Yes, sir.

[The information follows:]

Ms. DILLAMAN. Upon further review of our files, we were unable to locate a record on Christopher D. Baker, owner of Shirlington Limousine, in our system. It does not appear that the Department of Homeland Security requested an investigation of this individual.

Mr. THOMPSON. One more question, Mr. Chairman.

Mr. Williams, I have a very colorful chart—are you the author of this chart, or is that Mr. Prillaman—which kind of lists the major vacancies within DHS.

Staff created it. The red indicates major vacancies within DHS, and what I am concerned about is the inordinate amount of red associated with major vacancies within DHS. How do you propose to

reduce the number of vacancies within DHS from a human capital standpoint?

Mr. PRILLAMAN. What concerns me, Congressman, in part it looks like Secretary Chertoff and Deputy Secretary Jackson's box is red, too, which worries me.

Mr. THOMPSON. I am glad you asked because the Labor Relations Board, as you know, is vacant. The Office of Deputy Secretary, that person just resigned May 1, the Homeland Security Operations Center person resigned March 2. The Office of Chief Privacy Officer, that person resigned September 28 of last year and was replaced by an acting person who is still acting to this date. And Pam Turner, who we already know, head of leg affairs, resigned March 4th. So it kinds of speaks for itself. We have a lot of people leaving, gone, have not been replaced.

Mr. Chairman, I would like to have unanimous consent to enter this document into the record.

Mr. ROGERS. Without objection, it is admitted.

Mr. THOMPSON. I yield back.

Mr. ROGERS. I thank the gentleman.

The Chair now recognizes the gentleman, my friend from New Jersey, who has no accent, as you will all learn shortly, Mr. Pascrell.

Mr. PASCRELL. Even in New Jersey we have an accent.

Good morning. Thank you for your service to your country. That is the good part.

Let me get into this. I want the rank-and-file members of the Department of Homeland Security to know that we on the committee understand their problems, and we are going to work to improve upon the issues.

Having said that, we have not had oversight of the Homeland Security Department until this committee sought to move in that direction, so God knows what went on before this was an act of committee. So you have got a lot of problems. You are doing your best to face those problems.

You have vacancies at the top, you have vacancies at Newark Airport, TSA has a problem getting people and keeping people there, and this happens all across the country. We have problems with some of your contracts. Although we are going to have a separate hearing on Shirlington Limousine, we all know that at this point Shirlington Limousine and Transportation, Inc., holds a $21.2 million contract with the DHS. Its owner Christopher Baker has a rap sheet that runs 62 pages long. So, Ms. Dillaman, you would have to trip over that. It is very easy to trip over his record, this outstanding American citizen. Among the convictions on Baker's record are attempted petty larceny, attempted robbery, possession of drug paraphernalia, and receiving stolen property.

It is completely bewildering to me that anyone who has this kind of a rap sheet could ever get a penny from the Department of Homeland Security. You would expect to see the contractor possibly on a list of excluded parties, meaning that they might be temporarily suspended or even permanently dropped or debarred from doing business with the Federal Government.

Now, we sent a letter to Homeland Security. We sent that letter on May 11th, Mr. Chairman, Mr. Ranking Member, and we asked

some questions about this particular company. And I want to point out something about the answers that we got because this is serious business, very serious business. If you want us to have oversight and this is the responsibility of the Congress of the United States, then we sure as heck better have oversight. So whatever happens in DHS that goes wrong and we don't correct it, we are just as responsible. That is my feeling, that is my attitude, and nothing less is acceptable.

We asked a question about would they verify this company that was hired; in fact, we pointed specifically to part of the contract which was let in April of 04 for $3.8 million. We were concerned that this company may not meet the criteria which was established. Your criteria people, for the most part.

They answered in part that the contract files indicate that upon receipt of the proposals, the contract specialist verified the designation of each vendor as being a hub zone vendor. In other words, you had to be in a hub zone. You know what a hub zone is, right? Something that the administration has been trying to do with.

But let's get back to what they said. The contract files indicate that upon receipt of the proposals, the contract specialist verified the designation of each vendor as being a hub zone vendor. That is part of the answer to the first question.

Then we asked very specifically it is reported that this limousine service was the sole bidder. No, they said there were four bidders. Four companies responded to the solicitation. Two companies were determined to be ineligible for the hub zone. This guy must think we are drunk when we read this.

The question—before they say that they are all okay, this question is saying two companies were determined to be ineligible based on their small business status. The third company was issued a question requesting a classification on its hub zone small business status, which was unclear to its proposed teaming arrangement.

So now the only company left standing is, slowly I turn, Shirlington Limousine. They are the only ones left standing. So what we have done is—what we have done is—is by process of elimination, never thinking, I guess, to go out for bid again; oh, that is something different which we ask local officials to do and the State officials. The Federal Government doesn't have to do that; at least they didn't do that in this case.

I would like your response, Mr. Williams, since you are the Director of Office of Security, and you have taken a look at these things. I was astonished by the responses which obviously are honest to the questions before. What do you think about this?

Mr. WILLIAMS. As far as the Shirlington Limousine contract, the drivers have all had background investigations and passed those background investigations.

Mr. PASCRELL. We heard you say that before.

Mr. WILLIAMS. Okay. I am not sure—as far as how the procurement went, I have a very limited background in Federal procurement.

Mr. PASCRELL. It is kind of odd though. If all the people are eliminated except one, would you go out to bid again? None of you are in the procurement office.

Is that what you would do, Ms. Dillaman?

Ms. DILLAMAN. Sir, I have no experience in the procurement area.

Mr. PASCRELL. Okay. I would like to ask this question—can I ask one more question?

Mr. ROGERS. Sure.

Mr. PASCRELL. Because I want to have a second round. We just got started here, warmed up. I want to ask this question to Mr. Prillaman. I want to know how many private contractors there are in the Department of Homeland Security. I want to know how many private contractors are employed by the Department of Homeland Security. Can you give me that answer?

Mr. PRILLAMAN. I am sorry to ask a question, but do you mean contractors or the actual individuals working at Homeland, the actual individuals?

Mr. PASCRELL. Well, this is why I am asking the question. There is a payroll for the 180-some-odd-thousand people that work for you, and then there are contractors, contracts which you let, and you choose to go out of the public domain and hire private folks to do the job. How many are there, and what is their budget?

Mr. PRILLAMAN. I don't have that information, but I can certainly get it for you.

Mr. PASCRELL. Would you please do that?

Mr. PASCRELL. I would like to make a comparison between the private contract payrolls and how much money that adds up to compared to what the payroll is of the staff. I want to get back eventually to the question about what—low morale, and I thank you for your cooperation.

Mr. Chairman, I would like to come back again for the second round.

Mr. ROGERS. Absolutely.

I told you he didn't have an accent.

The Chair now recognizes the gentlelady from Texas Ms. Jackson-Lee, for any statement she may have. She sounds a lot like me, so I know she doesn't have an accent.

Ms. JACKSON-LEE. Thank you, Mr. Chairman, very much, and thank you for this important hearing.

One of the crucial roles and responsibilities of this Congress is oversight and investigatory responsibilities that serve the American people. I have no regrets in the original premise of this Department. I think Congress did the right thing. I think we responded with dispatch to organize an entity that would be unique in its seamless responsibility for securing this Nation and addressing the question of natural disasters.

But this hearing signals a cry for help. In fact, this red-designed graph is an SOS call, and I am delighted that the Chairman and the Ranking Member and the Ranking Member of the full committee have highlighted this subcommittee's responsibility of digging into what is going on.

I would say I had great hopes for the Secretary of this Department. As I recall, he offered recommendations for overhaul and change, but we are now in May 2006, and the only change I see is the proliferation of red, which is obviously symbolized by this de-

sign, but, more importantly, the lack of personnel in strategic responsibilities.

Now, let me, first of all, thank the employees, because I know every day that those who do work for this Department are committed and dedicated because I have seen them on the front lines.

But let me point to a crisis, in particular to Mr.Prillaman. Prillaman, is that correct?

Mr. PRILLAMAN. Prillaman.

Ms. JACKSON-LEE. Let me point to one that is really, I think, indicting. You heard the list of executives that are missing out of this Department. Let me recite for you the fact that the Office of the Chief Medical Officer is also serving as the Under Secretary for Science and Technology. The Assistant Secretary for Cyber and Telecommunications is vacant. Now, I don't know whether they would have the authority to provide me with information why the Federal Government is collecting billions of telephone data of citizens who are innocent of any acts of terrorism, but it would be nice to have someone in that position.

But we are in the midst of a very vocal and vibrant discussion on immigration, and lo and behold, one of these is the Immigration and Customs Enforcement. An argument that I made over a number of years is that we needed to reenforce the staffing of ICE, we needed to add the 15,000 border patrol agents that the 9/11 Commission asked us to do. Of course, Congress has some burden on that.

But can I point you directly to that question, and as I do that, let me share this other concern as well. And that would be for those who are able to answer that is, of course, as I compliment the staff. We are all embarrassed by the performance of FEMA and Hurricane Katrina, but we are more embarrassed and more incensed by the waste of taxpayers' dollars. I don't think if we began to trace a dollar, contractual dollar, that came out of the Department of Homeland Security and tried to find where it wound up in it; most of the people in New Orleans might say it wound up in a barrel of garbage, because we can't find the results of the dollars that Congress expended and for you to expend to help the people in New Orleans. We can't find where it is.

So my question is I would like to know this whole issue of delegating a lot of the responsibilities to other Federal agencies, particularly contractual, and as a result millions of scarce Federal dollars were wasted, and the Government did not get the performance needed out of its contractors. What are you doing so that we don't have the same kind of fiasco, layering of contractors, and waste of taxpayer dollars in light of what happened in Katrina?

So if you can focus on the landscape that we have, but, more importantly, if you can answer this question of what pointedly are you doing with respect to Immigration and Customs where there is a high vacancy, and then what are you doing with the failed contractual efforts that we had in Hurricane Katrina?

Mr. PRILLAMAN. With respect to Immigration and Customs Enforcement, I think this chart may actually be in error. Julie Myers is the head of Immigrations and Customs Enforcement, if that is the position that we are talking about.

Ms. JACKSON-LEE. We are not talking about that, because I didn't call her name. We are talking about the fact that there are a great deal of vacancies in that Department.

Mr. PRILLAMAN. I apologize.

Ms. JACKSON-LEE. We are talking about major immigration reform. When we throw to you the reform package that I hope this Congress will pass, which will include benefits and border security issues that really fall a lot in this area, what are you going to do, throw up your hands and say, we have no personnel? I mean, there are leadership roles; I know there are funding issues that Congress has to deal with, but I am talking about leadership roles.

Mr. PRILLAMAN. All I can say is the Department is moving as quickly as it possibly can to fill positions in all our critical areas, including Immigration and Customs Enforcement. Recruitment is probably our highest priority right now, recruitment and retention of talent across the Department. It takes time. It is an old saw, but it takes time to hire people, especially when security clearances are required, security background investigations.

We have thousands of applications. We are screening those applications and hiring people as fast as we possibly can.

Ms. JACKSON-LEE. If you could indulge me, Mr. Chairman. If you can provide this committee a specific report, because we are in the middle of immigration on the specific vacancies that you see in that area, so that we can be accurate.

Ms. JACKSON-LEE. I know that Ms. Myers, as I understand, she is a recess appointment at this time, but I understand she is there, but that is really crucial. Do we have any plans to fix this broken contractual relation where taxpayer dollars are wasted.

Mr. PRILLAMAN. FEMA as a whole is one of the Secretary's chief priorities to retool FEMA and its operations. How it contracts with other agencies is an area that I know is of critical, critical interest and concern right now. I am not engaged in the contracting process, but I do know that there are people at Homeland Security who are focusing 100 percent of their attention on exactly that problem.

Ms. JACKSON-LEE. Well, I welcome you to convey the interest here, and I would welcome a response back through the appropriate persons on that very question.

Mr. PRILLAMAN. Certainly.

Ms. JACKSON-LEE. Thank you. I yield back.

Mr. ROGERS. I thank the gentlelady.

I want to pick back up where I left off. Mr. Prillaman, I don't want to ask leading questions, I know this is not a courtroom, but would you acknowledge that there is a morale problem that is arising out of this problem with retention, particularly in the upper-level positions, that is filtering down into the ranks of these various agencies?

Mr. PRILLAMAN. Yes, sir, I think that is true.

Mr. ROGERS. In your opening statement you made the point that you are making progress. Tell me how you measure that progress. How can you objectively measure what you say is progress in fighting this morale concern as well as these retention concerns?

Mr. PRILLAMAN. As we said earlier, there is an old adage that most employees join an organization, and they leave managers. As I said earlier, a lot of what we are trying to do is get our line man-

agers, the people that employees deal with on a day-to-day basis, better trained, better able to deal with employee issues and to be better managers and supervisors. That is a critical function, and we have already trained, I mentioned earlier, 8,000 in the course of the last 8 months, and we are going to train 6,000 more in the course of the next 7 or months. We will be covering the entire Department with a training program.

I think employees, many employees, are concerned about vacancies at the top of the organization and they—

Mr. ROGERS. Do you think that is the primary reason for their low morale? That was the gist I got in the briefing document. Do you think it is something else?

Mr. PRILLAMAN. My personal sense is that employees are still wrestling with the fact that we are a new organization that was put together—it was a hostile takeover, essentially; it was not something they voted on. I think a lot of employees are still trying to feel their way and understand the new organization.

Mr. ROGERS. Let me ask Mr. Williams the same question. You have been around the block in DHS. What do you think about this morale problem, and what can we do to combat it? What are we doing?

Mr. WILLIAMS. I would say it is an organization for the high-performance employee. We have so many challenges. There is a burn-out rate. Again, when you have a burn-out rate at the higher levels, it does affect the other levels of the organization when they have constant turnover above them. I just think it is going to go with the territory though, this building DHS. It is a difficult job, and it is not for the weak at heart.

Mr. ROGERS. So you don't see changes taking place that are measurable at present?

Mr. WILLIAMS. I think that we are seeing progress because it is not as fluid of an organization as it was even 18 months ago. As time goes on, we are gaining stability, but we are not there yet. We have a way to go.

Mr. ROGERS. Ms. Dillaman, your thoughts.

Ms. DILLAMAN. Yes, sir. I am not really familiar with the inner workings of the Department of Homeland Security. I provide a service to them. But I can tell you with any organization, stabilizing the leadership team and developing the leadership team goes a long way to improving the morale of an organization.

Mr. ROGERS. Let's talk about that service. Oscar Antonio Ortiz, arrested August 4th of 2005, charged with conspiracy to bring in illegal aliens, false claims of United States citizenship, false statement in acquisition of a firearm, illegal alien in possession of a firearm, guilty plea January 26, 2006, awaiting citizenship. You all conducted the investigation on this gentleman?

Ms. DILLAMAN. Yes, sir, we did.

Mr. ROGERS. How did this happen?

Ms. DILLAMAN. Sir, I am prohibited from discussing the specifics of the investigation under the Privacy Act in this forum, but I can talk to you in general of how it works. Information is collected on an individual. If they claim they were born in this country, independent confirmation is made at the Bureau of Vital Statistics. The

information is gathered and turned over to the Department of Homeland Security for adjudication.

Again, I can't talk about the specifics of what was found, but I personally reviewed this investigation. It was complete, it was thorough, and it was accurate.

Mr. ROGERS. And it didn't work.

Ms. DILLAMAN. I didn't say that, sir.

Mr. ROGERS. The facts say that.

Let me ask, in your investigations are you allowed to inquire whether or not people that you are doing background checks are U.S. citizens?

Ms. DILLAMAN. Yes, sir.

Mr. ROGERS. Do you check them against terrorist watch lists?

Ms. DILLAMAN. Yes, sir.

Mr. ROGERS. Same question to you, Mr. Williams. In looking at contractors that you are talking about giving approval to be brought in as a contractor for DHS, are you allowed to check whether or not they are a U.S. citizen?

Mr. WILLIAMS. Yes, sir. We go through the same process as a Federal employee.

Mr. ROGERS. Same thing with the terrorist watch list.

Mr. WILLIAMS. That is correct.

Mr. ROGERS. What about the company? You make that check on the business entity, or do you look behind the company to the officers and/or directors of that company?

Mr. WILLIAMS. No, we are looking at, again, the individual folks that will be on that contract working as staff, like as Federal employees, but we aren't looking into the management structure of that company.

Mr. ROGERS. Most of the contractors that provide services to the 22 agencies that make up DHS are what we would call small businesses. Granted, from the Federal perspective—those are some pretty big contracts, at least in east Alabama we think they are big contracts but still, we would view them as small businesses. Virtually all of these small businesses are going to be a corporate entity or LLC or some variation of that. And if you don't look behind that entity to whoever the officers and the directors are, you are really not doing a diligent job in security. Would you agree with that?

Mr. WILLIAMS. I think there are a number of circumstances where that would be important to do. If that was a requirement of the procurement office, we would vet whoever they request be vetted within that corporation.

Mr. ROGERS. Do you have the legal authority to do that?

Mr. WILLIAMS. With nonindustrial security contracts—again, I am not an attorney, so I think it is a little questionable. I don't know.

Mr. ROGERS. I am told by the procurement office you do not have that legal authority, and I am also told you do not have the legal authority to inquire as to whether or not they are a U.S. citizen. I am told that the procurement office does not check their names against the terrorist watch list.

I offer this because I go back to the Shirlington contract—and I really don't want to get immersed in this, but I think it is impor-

tant in light of Ms. Dillaman's statement and some of the inferences from this testimony to make this point—we aren't doing due diligence in these contracts. If we don't look to who the officers and directors of some of these small businesses are, then we are setting ourselves up to have somebody who is truly a bad guy. It could be somebody like the Chairman of the full committee was referencing, it could be some organized crime figures who are actually the officers or directors or manipulating them, or it could be the terrorist who owns that small business. If we are not checking to see if they are a U.S. citizen or checking them against the terrorist watch list—it could be Mr. Baker who actually is hiring the drivers, and the drivers may pass the background check, but they are working for him, and we don't know what his ulterior motives are.

I think it is important in looking at our security practices for contractors and personnel that we look at being broader in scope and more practical in what we research and what we don't research. It is a new day, and folks, at a minimum, expect DHS to be held to a high standard when it comes to the security of its personnel.

I see my time has expired and now turn to the Ranking Member for any additional questions he may have.

Mr. MEEK. Thank you, Mr. Chairman. I am glad we are able to do a second round of questioning. Based on your questioning and the responses that I have heard, Mr. Chairman, I think as we go through approaching this hearing, that we must have a closed hearing with some of the same panelists so we can really get down to the nitty-gritty of why we are in the position that we are in now with these kinds of things happening, because I can tell you right now, in open hearing we may get confused or who is on first and who is on second.

Again, I will take from my good friend Mr. Pascrell from New Jersey, we want to thank you for your service to the country, and I know it has to be quite uncomfortable to answer these questions on behalf of the Department where the ball has obviously been dropped. You want to talk about a paper-shaking experience in the morning when you pick up the paper or you watch a news story day after day, and it is riddled with incompetence at the Department of Homeland Security. That has a lot to do with attrition. And we are in this battle to make sure that we work towards straightening that all you out, so all of this is constructive.

I just also want to say that this subcommittee is on record to give, Mr. Prillaman, line authority to people like yourself so that when you are dealing with other human resources, I am just going to say human resources, human capital managers, the seven that you deal with, and you have a mission, you have MAX HR—I keep saying that, and it is not my work product, but I am going to say you have MAX HR to carry out, it is not a decision by committee on implementation. I mean, if you have to do it, you have to do it, and you have to have oversight to make sure that it is implemented in a way it is supposed to be implemented.

Of course, we want the Council to be more inclusive, but at the same time, when it comes down to it, guess who is at the hearing? You. Same thing with the information officer. We passed legislation

just a couple of months ago to give line authority in areas at your level.

So I think it is important that you understand that we are part of the solution and not a part of the problem, but we have to ask about the problem. We established a record on the issue of human capital, and I am resisting from going into the whole contract issue because a part of these hearings is developing a record and hopefully moving on to some legislation. Because I can tell you right now, Mr. Chairman, members of this committee, I don't believe that the Department has the ability, even though I have a great deal of respect for one of the greatest managers that I believe over at the Department, Under Secretary Michael Jackson, who I have met with several times, I am glad he is still hanging with the Department, but it is hard when you have few people trying to do the right thing, and we have managers that are coming in and out, rotating door, they get their security clearance, they go to the private sector, they leave. How would you like going to the private sector with, on your resume, Department of Homeland Security, leave alone FEMA? It is almost like some of us going to an election season this year saying we are part of the 109th Congress, but that is another editorial.

So I am saying that we are in this thing together. And so I think it is important that we look at it from the standpoint of establishing the record on this human capital issue.

I just want to point to a document that I was looking at a little earlier. As you know, the rankings, I know that we try to recruit individuals from institutions of higher learning, we try to recruit individuals from other ranks of the Federal Government, but the Partnership for Public Service and Institute for the Study of Public Policy Implementation, the School of Public Affairs over at American University has a ranking of who—I mean, where to go, the best places to work. It is entitled: The Best Places to Work in the Federal Government 2005. It is a ranking from 1 to 30, and The Department of Homeland Security is number 29, 46.7 percent rating, only beating out the Small Business Administration.

I think it is important that we take this very seriously, and I want to thank you, Mr. Prillaman, for being brutally obvious of the honest, that we do have a problem. So if we have a problem, we have to, A, admit it. And we don't go to Wednesday meetings like the AA meetings and say, hi, my name is Gregg; we go to the meetings—we come to this meeting and start to say, maybe, Congressman, we need to do this or do that.

We don't want you to make a career decision here today, but we want to send a strong message to Department of Homeland Security you have to share the information with us, because eventually we are going to get it, and it is going to be on the front doorsteps of our constituents' front door. And then we are going to have to be accountable.

I take from my good friend Mr. Pascrell once again, we are responsible. If you are riding in first class, and we are in coach, if the plane is going down, we are going down together. If I can do anything about it, which we all can as Americans, let's do something about it.

I asked the chief procurement officer—we keep uttering her position here today—we met, and we have been trying to work through these issues leading up to the hearing to get a better understanding of what we should do, because we have a genuine responsibility to make sure that we see it through—if there are in-house documents that will help push us in the right direction and break down this attrition. MAX HR may be the thing hanging on the wall saying we will do it, or what is the slogan here around the Capitol? I am trying to remember; it will come back to me a little later, I know, after the hearing. But the whole—we must stick with a philosophy when there is litigation right now within the Department of Homeland Security as relates to MAX HR.

So my question is, before we run out of time, we may get another round before votes if we have any additional comments, what is the shining example within the Federal Government of MAX HR to show that it has worked and that it has been fair across broad application? Because we are asking a number of people, matter of fact thousands of people, to carry out practices of goodwill and understanding of MAX HR.

Mr. PRILLAMAN. The part that most employees find controversial are a broadband compensation system and pay for performance. One of the best examples out there is the General Accounting Office. David Walker is a strong believer in having employees have a clear understanding of what their responsibilities are and where they fit in the organization. He has built a compensation system where he can reward his best talent, differentiate them from the better performers and lesser performers, and motivate people. He may have it right.

Mr. MEEK. Good question, because now my time ran out. How big is the General Accounting Office?

Mr. PRILLAMAN. Relatively small; 3,000 employees perhaps.

Mr. MEEK. How many people are in MAX HR right now?

Mr. PRILLAMAN. We have in the performance management part of it about 10,000, 12,000 so far.

Mr. MEEK. So you are now in the front seat of this MAX HR, far beyond the numbers of the greatest example that can be pointed to, to say that it actually works; am I correct?

Mr. PRILLAMAN. Yes, sir.

Mr. MEEK. So I think it is important if we look at this whole attrition issue that we have to look at it from the standpoint of making sure that we have got to get it right. And it is very hard to go through the whole guinea pig piece of saying we already have a problem that we have admitted, and now we are going to step into another possible sinking boat. We have litigation, we have employees that are saying thank you for having a hearing because we have issues that are not being addressed that I think may end up hurting us more than helping us.

What do you think—and this is for the panel, and this is my last question for this round. What do you think your chances are in court that MAX HR will get an injunction like the Department of Defense similar program they have as relates to pay for performance?

Mr. PRILLAMAN. It right now is already enjoined by the district court. We are appealing that decision, and there should be a deci-

sion by the court of appeals in, I would say, late May, early June, maybe late June.

Mr. MEEK. What do you think are the chances of the Department prevailing in that?

Mr. PRILLAMAN. My official position is, of course, we are going to win. My sense is it will be an interesting decision.

Mr. MEEK. Then we are going to have to come up with another program, correct?

Mr. PRILLAMAN. There might be a need to change direction, yes, sir.

Mr. MEEK. I don't want to get into I am going to buy my lunch, you are going to buy my lunch, but I can tell you right now this issue is so serious. I know we are making some fun of it, but there are some people that are being affected by the decisions that have been made as relates to personnel, and I think it becomes a point when folks say that there are things that we can do now, and there are things we can do later, things that we can pilot at a small number and research to make sure that it is right before we start getting into broad application, and this may very well be one of those things.

Again, we don't want to micromanage, but we are the oversight committee for management and oversight, and I think that it is an integration, and it is important that we have an ongoing conversation about some of these issues. So my questions and my statements were along the line of building the record so that hopefully we can get to the bottom of trying to do what we can. This is preventive maintenance, not a one-fix thing to deal with our HR issues at the Department. I will leave it at that.

Does anyone else on the panel have anything to say to address any of my questions?

Mr. WILLIAMS. No, sir.

Mr. MEEK. Good. With that, Mr. Chairman, I will yield back the balance of my time that I have already gone over.

Mr. ROGERS. I thank the gentleman.

The Chair now recognizes the gentleman from Mississippi, the Ranking Member of the full committee, for any questions he may have.

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

Mr. Prillaman, my staff made a request of some information relative to vacancies and what have you, and to some degree you provided it, but there are some additional items that I need, and it is around training cost of officers and a number of things.

Mr. Chairman, if you remember, from time to time we have been given some astronomical numbers for which we find hard to believe for training many of the people. Can I get assurance from you that we can get that information as to the training cost associated with our law enforcement people?

Mr. PRILLAMAN. Yes, sir.

Mr. THOMPSON. The Chairman also indicated, in a timely manner.

We have the seven personnel systems. We have already talked about that. Now your shop is in the management section; am I correct?

Mr. PRILLAMAN. Yes, sir.

Mr. THOMPSON. So now as of today who do you report to?

Mr. PRILLAMAN. The Under Secretary for Management.

Mr. THOMPSON. That is who?

Mr. PRILLAMAN. It would be Janet Hale.

Mr. THOMPSON. Now, you know she has resigned?

Mr. PRILLAMAN. Yes, sir.

Mr. THOMPSON. All right. Effective May 1.

Mr. PRILLAMAN. She actually has remained with the Department. I think her effective date of separation now will be this coming Sunday.

Mr. THOMPSON. Okay. Maybe she changed it.

Mr. PRILLAMAN. She did.

Mr. THOMPSON. What I am getting at is this committee's continuing concern about so many vacancies in so many critical positions, and you are charged with trying to make the system work. It is utterly impossible, in some of our minds, that you can ever elevate morale with what is going on around you. You have my sympathies. It is a difficult task, but also we have to somehow help fix it.

I am not sure if MAX HR created this dilemma. A lot of people say that created it, but we really need a system that works. I accept the notion that it takes 5 to 7 years to get it right, but to some degree some of the missteps along the way, there should be systems in place for those things not to happen.

I look forward to working with you and doing whatever. Mr. Chairman. As you know, we are going to, based on what the Chairman of the full committee said, take up a full authorizing piece of legislation, and I think some of this we can try to fix within that legislation, but we have to absolutely do something.

My district was touched by Hurricane Katrina, and when I see 73 percent, only 73 percent, of the employees in FEMA on board this close to hurricane season, I am concerned. When I see the number of complaints filed by employees in terms of grievances and personnel actions, that tells me we have a problem.

So, Mr. Chairman, in the interest of time, and wanting to get to the second panel, I have the commitment to get the training cost information that we did not get with our initial request. And with that, I will yield back.

Mr. ROGERS. I thank the gentleman.

I also would like to reemphasize to the panelists and the panel that follows what the Ranking Member says is exactly accurate. We want to be partners in this process. As I said in my opening statement, we intend to be vigorous in our oversight activities, but we are doing it because we are trying to glean from you all what we can do to try to help. We want to see this Department become very successful. We want to see these retention problems eliminated and recruitment problems resolved, but we need to know what we can do to help you. In addition to shedding light on this problem and holding you to a higher standard, we want to be held to a higher standard. So, we ask you to at all times share with us what you see as far as policy changes we can make that would facilitate your dealing with these problems.

With that, we will recognize the gentleman from New Jersey for any additional questions he may have.

Mr. PASCRELL. Thank you, Mr. Chairman.

I would like to ask Director Williams a question. I thought it was revealing testimony, Mr. Chairman, when you were asking—Members were asking questions about morale within the Department, and I listened very carefully to what Mr. Williams had to say. People finding their way, kind of. But if you look at the Federal human capital survey, which was conducted by the Office of Personnel Management, a majority—they found a majority of the DHS employees participated did not answer favorably when asked about promotions based on merit.

Mr. Williams, do you promote people based on merit?

Mr. WILLIAMS. Yes, we do merit-based promotions.

Mr. PASCRELL. So, in other words, these folks, the majority of whom say that you don't, they are mistaken. Your employees are mistaken?

Mr. WILLIAMS. I don't know that they are mistaken, and again, I don't have all the details of the survey. I can only be anecdotal based on the experience within my office.

Mr. PASCRELL. They also say that personnel empowerment with respect to work, that there is no empowerment in the job responsibilities that they have. Do you agree with that?

Mr. WILLIAMS. Again, I would like to think that I do empower the employees within my office to get the job done.

Mr. PASCRELL. They say in response to fairness and performance appraisals, they don't find fairness in those appraisals. They are mistaken there also?

Mr. WILLIAMS. The performance appraisal systems that we have used up to date I think have minimal impact. I don't know that they give you the full picture of the employees. I, for one, was looking forward to MAX HR to have more of an opportunity to fully assess someone. The assessments used prior to that are nominal. It is not a very in-depth assessment of their abilities.

Mr. PASCRELL. Looking at your employees are responding and listening to what you are saying, there is kind of a disconnect here, and I think it is worth looking at and addressing. I would make that recommendation. We haven't even heard from employees yet.

I would like to ask another question, Mr. Williams. Do you believe that an overreliance on contractors leads to ineffective due diligence on the part of the Department of Homeland Security? What point are you overrelying upon—relying too much on contractors rather than internal personnel? And do you see that as a problem.

Mr. WILLIAMS. In my office it has not been a problem. My office is almost a 50–50 split between contractual staffs and Federal employees. I think a lot of it was developed in the way Homeland Security was evolved and a high reliance on contractor staff. Over time I think the percentage is shifting to more of a Federal workforce as opposed to contractual workforce, but, quite frankly, in my office I think I would have a difficult time telling who are the Feds and who are the contractors. We work pretty much hand in hand.

Mr. PASCRELL. Do you think that contributes to more stability if you can rely on your employees day to day rather than moving out to private contractors outside the recommendation of the Federal Government?

Mr. WILLIAMS. I think we have a higher degree of a stability among the employers in the contractual.

Mr. PASCRELL. Why?

Mr. WILLIAMS. I think it probably has to do with, in fact, a lot of the contractual staff, a number of them eventually become Federal employees, and I think it has to do with benefits. Then you have others that their interests are more job-specific, and they are more willing to move for increased benefits.

Mr. PASCRELL. Thank you.

Mr. Prillaman, I would like to ask you one question. Hurricane Katrina was a catastrophe on many levels. For our purpose I would like to talk about the lessons it taught us, taught the Department, Department capabilities to execute its procurement program and management responsibilities. The Department of Homeland Security pretty much threw up its arms and delegated much of the responsibility, as we have learned, to other Federal agencies during that catastrophe. As a result, millions of scarce Federal dollars were wasted, and the Government did not get the performance that it needed out of its contractors.

What are you doing to create and maintain a competent procurement shop in the Department? Because that is going to be part of the discussions that we have next week. This will be my final question.

Mr. PRILLAMAN. The procurement is recognized as a serious problem within Homeland Security, and we have established at FEMA alone more than 19 new positions for procurement specialists and are filling those positions as fast as possible. It is hard to find procurement specialists, quite frankly, around the Washington community, but we are trying to fill those as fast as possible. Across the Department's procurement office, including the main office in the Bureau of Management where I work, I know they are providing considerable more oversight to the procurement officers located in the various components.

Mr. PASCRELL. Just how serious is the problem? Just how serious is the procurement problem?

Mr. PRILLAMAN. Finding qualified procurement talent is a problem governmentwide. I think OPM could speak to that. And we are in the same boat that many other agencies are.

Mr. PASCRELL. Mr. Chairman, through the Chair I want to ask this question and all of us to be on board on this question. I am going to ask a question, and if it is out of order, tell me it is out of order, through the Chair, to Mr. Prillaman.

I want to know out of every $50—you have taken a review since you have been there for 1 year?

Mr. PRILLAMAN. Eight months.

Mr. PASCRELL. Eight months, I am sorry. You have taken a review of contracts, taken a look at them? I am going to make a statement; you tell me whether I am using hyperbole, or whether it is pretty accurate in terms of what you are found. I have not done a universal check. I would say out of every $5 spent, $2 is wasted. Is that, in your estimation, an exaggeration?

Mr. PRILLAMAN. It is going to sound evasive, but I honestly have not made that kind of a study.

Mr. PASCRELL. Thank you, Mr. Chairman.

Mr. ROGERS. I thank the gentleman.

We are about to be called for a series of votes. I want to ask one more question, not a series. I do want to follow up on the question I had of Ms. Dillaman about Mr. Ortiz and ask you, Mr. Williams, do you feel like the ball was dropped when it was handed off to you?

Mr. WILLIAMS. I would have to look further into that particular case. I don't think it was a DHS headquarters case. Again, we have seven or eight individuals, security officers, and I have to examine the case within those offices.

Mr. ROGERS. I would ask you after the hearing to submit for the record your thoughts on where the ball was dropped with regard to that specific case.

Mr. ROGERS. With that, what I would point out to the witnesses is that one of my many failings is I don't do what my staff tell me to do enough. I am sure that my colleagues on the other side probably suffer from the same problem, in that the staff gives me a series of questions they really want me to ask for the record, and I always wind up going down my own little pig trail of questions that never include theirs.

So I would remind you that for the next 10 days the record will be left open. If any of the Members suffer from the same problem I suffer from and didn't get the questions they really need to have asked for the record, I ask that when you receive these questions from us, respond in writing within 10 days so we can get those memorialized for the record.

Mr. ROGERS. There being no further questions, this panel is excused. Thank you for being here.

Mr. ROGERS. I would like to call up the second panel now.

This panel will consist of John Gage, National President of the American Federation of Government Employees; Colleen Kelley, President, National Treasury Employees Union; and Professor Charles Tiefer, Professor of Law at the University of Baltimore School of Law.

Thank you for being with us. Please be seated.

What we would like to do, given that we know that we are going to be called for votes pretty soon, is to try to get in your opening statements before we have to recess briefly. So the Chair now calls Ms. Colleen Kelley, President of the National Treasury Employees Union, for any statement you may have. And again, I remind you to try to keep your statement within 5 minutes because your full statement will be submitted for the record so you don't have to offer the whole thing, unless you just want to.

Ms. Kelley.

STATEMENT OF COLLEEN M. KELLEY

Ms. KELLEY. Thank you very much, Chairman Rogers, Ranking Member Meek. I appreciate the opportunity to testify on human capital issues at the Department of Homeland Security.

NTEU represents over 150,000 Federal employees, and 15,000 of those employees work for Customs and Border Protection in Homeland Security.

The Homeland Security Act that created the Department required that any new human resource management system would

ensure that employees could organize, bargain collectively and participate through labor organizations of their own choosing in decisions that affect them. Because the final personnel regulations failed to meet these statutory requirements, NTEU challenged those regulations in court.

Last August the Federal district court ruled that the regulations did not provide for collective bargaining or fair treatment of the employees as required by the act, and DHS, as we heard, has appealed that decision.

Despite the court's injunction, the President's 2007 budget request has more money requested for designing and implementing Homeland Security's proposed personnel system, MAX HR, than it does for frontline, port and border security personnel and for trade facilitation employees.

The President's request is $32 million to increase for frontline positions at the 317 ports of entry, but he has asked for $42 million for implementation of MAX HR. Now, NTEU is very gratified that House appropriators, at NTEU's urging, has rejected this new funding request for MAX HR.

NTEU had a preview of what the proposed MAX HR pay-for-performance system would look like when Customs and Border Protection unilaterally eliminated the union-management-administered performance award system this past year. The prior performance award program was a transparent committee process with labor and management represented, and every award and every reason for the award was made public. Under the system that CBP management has now unilaterally implemented, decisions were made behind closed doors, and those receiving awards and the reasons for the awards were to be kept secret. NTEU objected, and an arbitrator ruled in our favor, ordering the performance awards program to be redone in an open and transparent manner. Homeland Security has appealed that arbitrator's decision.

Another area of concern for Customs and Border Protection officers is the One Face at the Border initiative, which was designed to eliminate the separation of immigration, customs and agriculture functions at the ports of entry. Congress must ensure that expertise is retained with respect to these functions. The One Face at the Border initiative does not do that, and thereby it jeopardizes our national security. In addition, air, land and seaports are woefully understaffed.

The Senate has proposed adding at least 2,500 Customs and Border Protection officers in an immigration bill being debated this week. While the House called for the addition of 1,200 new CBP officers over 6 years in both the safe ports bill and its border security and immigration bill, that number is far short of what is needed. And CBP officers carry weapons, and at least three times a year they must qualify and maintain proficiency on a firearm range. CBP officers have the authority to apprehend and to detain those who are engaged in smuggling drugs and violating other civil and criminal laws, yet they have been denied law enforcement status and benefits.

NTEU strongly supports H.R. 1002, the bipartisan Law Enforcement Officers Equity Act, that has 151 cosponsors including Homeland Security Committee chair Peter King, and full committee and

subcommittee Ranking Members Bennie Thompson and Kendrick Meek. This legislation would treat CBP officers as law enforcement officers and provide them with a 20-year retirement benefit, long overdue for these employees who perform critical law enforcement duties every day.

CBP employees are loyal and dedicated, but they are extremely disturbed by the agency's recent misuse of national and internal security arguments to justify actions that have no security implications, while they are ignoring real threats to our national security. This issue was dramatically highlighted when it became known that CBP had to raise no security questions about the United Arab Emirates-owned Dubai Ports World buying port facilities in the United States. Yet the list of actions that CBP has raised security concerns about with regard to its employees is long, and it is ridiculous.

For example, CBP claimed that wearing uniforms with shorts threatens security. The Federal Services Impasses Panel found no security issue. CBP also outlawed beards and implemented strict restrictions on hairstyles, claiming security needs. An arbitrator found no merit to this argument. CBP discontinued a practice of allowing pregnant officers to use shoulder holsters rather than waist holsters, claiming security concerns. Unfortunately, this needless and discriminatory policy has been upheld. These are just a few examples of how CBP continues to misuse security considerations to try to justify the unjustifiable.

It is particularly disturbing to CBP employees that security concerns are falsely raised on these types of minor issues, yet issues with real security implications like the Dubai Ports issue and the lack of staffing go unquestioned by CBP.

I look forward to continuing to work with this committee to help the Department of Homeland Security to meet its critical missions, and I would be happy to answer any questions that you have. Thank you.

Mr. ROGERS. Thank you, Ms. Kelley.

[The statement of Ms. Kelley follows:]

PREPARED STATEMENT OF COLLEEN M. KELLEY

Chairman Rogers, Ranking Member Meek, I would like to thank the subcommittee for the opportunity to testify on human capital issues at the Department of Homeland Security (DHS).

As President of the National Treasury Employees Union (NTEU), I have the honor of representing over 150,000 federal employees, 15,000 of whom are Customs and Border Protection (CBP) employees at the Department of Homeland Security. I am also pleased to have served as the representative of NTEU on the DHS Senior Review Committee (SRC) that was tasked with presenting to then-DHS Secretary Tom Ridge and then-OPM Director Kay Coles James, options for a new human resources (HR) system for all DHS employees. NTEU was also a part of the statutorily mandated "meet and confer" process with DHS and OPM from June through August 2004.

It was unfortunate that after two years of "collaborating" with DHS and OPM on a new personnel system for DHS employees that NTEU was unable to support the final regulations. While some positive changes were made because of the collaboration between the federal employee representatives and DHS and OPM during the meet and confer process, NTEU was extremely disappointed that the final regulations fell woefully short on a number of the Homeland Security Act's (HSA) statutory mandates. The most important being the mandates that DHS employees may, "organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them," (5 U.S.C. 9701(b)(4)) as well as the

mandate that any changes to the current adverse action procedures must "further the fair, efficient and expeditious resolutions of matters involving the employees of the Department." (5 U.S.C. 9701(f)(2)(C)).

Because the final personnel regulations failed to meet the statutory requirements of the HSA in the areas of collective bargaining, due process and appeal rights, NTEU, along with other federal employee unions, filed a lawsuit in Federal court. On August 12, 2005, the federal district court ruled the labor-management relations and appeals portions of the DHS final personnel regulations illegal and enjoined their implementation by DHS. The court found that the regulations did not provide for collective bargaining or fair treatment of employees as required by the Act. DHS appealed the district court's decision to the U.S. Court of Appeals for the District of Columbia Circuit. Oral arguments were heard by the appeals court on April 6, 2006. If NTEU's challenge is sustained, as we expect, DHS will be required to rewrite the regulations to conform to law. If not, Congress should act to ensure that DHS complies with its clear directives regarding collective bargaining, due process and appeal rights.

As the subcommittee is aware, the HSA allowed the DHS Secretary and the OPM Director to make changes in certain sections of Title 5 that have governed the employment rights of federal employees for over 20 years. In the first part of my testimony, I will focus my comments on three areas of the final personnel regulations that fell short of protecting federal employees' rights: labor relations/collective bargaining, due process rights, and the pay for performance system.

DHS PERSONNEL REGULATIONS ISSUES

The Homeland Security Act requires that any new human resource management system "ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them." NTEU believes that the final regulations do not meet this statutory requirement in the following ways.

Labor Relations/Collective Bargaining

Under the final personnel regulations, the responsibility for deciding collective bargaining disputes will lie with a three-member DHS Labor Relations Board appointed by the Secretary of the Department of Homeland Security. Senate confirmation will not be required, nor is political diversity required among the Board members. Currently, throughout the federal government, collective bargaining disputes are decided by the Federal Labor Relations Authority (FLRA), an independent body appointed by the President and confirmed by the Senate. A true system of collective bargaining demands independent third party determination of disputes. The final regulations do not provide for that, instead creating an internal system in which people appointed by the Secretary will be charged with deciding matters directly impacting the Secretary's actions. The district court ruled this section of the regulations illegal.

Under the final regulations, not only will management rights associated with operational matters (subjects that include deployment of personnel, assignment of work, and the use of technology) be non-negotiable, but even the impact and implementation of most management actions will be non-negotiable. In other words, employee representatives will no longer be able to bargain on behalf of employees concerning the procedures that will be followed when DHS management changes basic conditions of work, such as employees' rotation between different shifts or posts of duty, or scheduling of days off.

The final regulations further reduce DHS' obligation to collectively bargain over the already narrow scope of negotiable matters by making department-wide regulations non-negotiable. Bargaining is currently precluded only over government-wide regulations and agency regulations for which a "compelling need" exists. The new DHS personnel system would also allow management to void existing collective bargaining agreements, and render matters non-negotiable, simply by issuing a department-wide regulation. The district court ruled this section of the regulations illegal.

A real life example of the adverse effect of the negotiability limitations on both employees and the agency will be in the area of determining work shifts. Currently, the agency has the ability to determine what the shift hours will be at a particular port of entry, the number of people on the shift, and the job qualifications of the personnel on that shift. The union representing the employees has the ability to negotiate with the agency, once the shift specifications are determined, as to which eligible employees will work which shift. This can be determined by such criteria as seniority, expertise, volunteers, or a number of other factors.

CBP Officers around the country have overwhelmingly supported this method for determining their work schedules for a number of reasons. One, it provides employees with a transparent and credible system for determining how they will be chosen

for a shift. They may not like management's decision that they have to work the midnight shift but the process is credible and both sides can agree to its implementation. Two, it takes into consideration lifestyle issues of individual officers, such as single parents with day care needs, employees taking care of sick family members or officers who prefer to work night shifts. The new personnel system's elimination of employee input into this type of routine workplace decision-making has had a negative impact on morale.

Due Process and Appeal Rights

One of the core statutory underpinnings of the HSA was Congress' determination that DHS employees be afforded due process and that they are treated in a fair manner in appeals they bring before the agency. In fact, the HSA clearly states that the DHS Secretary and OPM Director may modify the current appeals procedures of Title 5, Chapter 77, only in order to, "further the fair, efficient, and expeditious resolution of matters involving the employees of the Department." (5U.S.C. 9701 (f) (2) (C)). Instead the final regulations undermine this statutory provision in a number of ways.

The final regulations undercut the fairness of the appeals process for DHS employees by eliminating the Merit Systems Protection Board's (MSPB) current authority to modify agency-imposed penalties. The result is that DHS employees will no longer be able to challenge the reasonableness of penalties imposed against them, and the MSPB will now only be authorized to modify agency-imposed penalties under very limited circumstances where the penalty is "wholly unjustified," a standard that will be virtually impossible for DHS employees to meet.

The final regulations exceed the authority given in the HSA to the Secretary and OPM Director, by giving the Federal Labor Relations Authority (FLRA) and the MSPB new duties and rules of operation not set by statute. The FLRA and the MSPB are independent agencies, and DHS and OPM are not authorized to impose obligations on either independent agency, or dictate how they will exercise their jurisdiction over collective bargaining and other personnel matters.

In the final regulations, the FLRA is assigned new duties to act as an adjudicator of disputes that arise under the new labor relations system and the regulations also dictate which disputes the FLRA will address and how they will address them.

In addition, the final regulations conscript the Merit System Protection Board as an appellate body to review, on a deferential basis, findings of the new Mandatory Removal Panel (MRP). Chapter 12 of Title 5, which sets out MSPB's jurisdiction, does not authorize this kind of action by the Board and the DHS Secretary and OPM Director are not empowered to authorize it through regulation. A similar appellate role is given to the FLRA. It is tasked with reviewing decisions of the Homeland Security Labor Relations Board (HSLRB) on a deferential basis. There is no authority for assigning such a role to the FLRA and the district court has ruled these provisions illegal.

The final regulations also provide the Secretary with unfettered discretion to create a list of Mandatory Removal Offenses (MRO) that will only be appealable on the merits to an internal DHS Mandatory Removal Panel (MRP) appointed by the Secretary.

The final regulations include a preliminary list of seven potential mandatory removal offenses but are not the exclusive list of offenses. The final regulations also provide that the Secretary can add or subtract MRO's by the use of the Department's implementing directive mechanism and that the Secretary has the sole, exclusive, and unreviewable discretion to mitigate a removal penalty.

By going far beyond the statutory parameters of the HSA, and drastically altering the collective bargaining, due process and appeal rights of DHS personnel, the district court ruled these sections of the proposed regulations illegal. The overreaching by DHS in formulating these personnel regulation and the subsequent court ruling leaves CBP employees with little or no confidence that they will be treated fairly by the agency with respect to labor-management relations, appeals or pay by the department.

MaxHR Pay-for-Performance Proposal

While not a part of the lawsuit filed by NTEU and other federal employee representatives, the final regulations as they relate to changes in the current pay, performance and classification systems of DHS employees must be brought to the attention of this subcommittee. While the final regulations lay out the general concepts of a new pay system, they remain woefully short on details.

Too many of the key features of the new system have yet to be determined. The final regulations make clear that the agency will be fleshing out the system's details in management-issued implementing directives while using an expensive outside contractor that will cost the agency tens of millions of dollars that could be used

for additional front line personnel. Among the important features yet to be determined by the agency are the grouping of jobs into occupational clusters, the establishment of pay bands for each cluster, the establishment of how market surveys will be used to set pay bands, how locality pay will be set for each locality and occupation, and how different rates of performance-based pay will be determined for the varying levels of performance.

And, much to the consternation of short staffed frontline CBP employees, the President's FY 2007 Budget requests an additional $41.7 million for implementation of MaxHR. This request is a **133% increase** from $29.7 million in FY 2006 to $71.4 million in FY 2007 including $15 million for establishment of pay pools; $22 million in implementation and operational costs; and $4.75 million to fund the Homeland Security Labor Relations Board, the creation of which the District Court ruling has enjoined. The President's budget funds an additional 16 FTEs to administer MaxHR. In contrast, the FY 07 budget request for salaries and expenses for Border Security, Inspection and Trade Facilitation at the understaffed 317 Ports of Entry (POEs) is $32 million—adding only 21 FTEs.

NTEU is especially mindful of the fact that the more radical the change, the greater the potential for disruption and loss of mission focus, at a time when the country can ill-afford DHS and its employees being distracted from protecting the security of our homeland. However, before any changes are made to tie employees' pay to performance ratings, DHS must come up with a fair and effective performance system.

CBP employees got a preview this past winter as to how DHS will administer a new pay-for-performance program when it unlawfully terminated the negotiated Awards and Recognition procedures and unilaterally imposed its own awards system. At the conclusion of the FY 2005 awards process, CBP, contrary to the parties' seven year practice of publicizing the names and accomplishments of award recipients as determined by a joint union-management committee, embarked on a policy of refusing to reveal the results of its awards decisions, the amount of the awards, and the accomplishments that resulted in the granting of the award so that employees in the future could emulate these accomplishments and too win an award.

Not only were the unilaterally decided award results not publicized, but NTEU Chapters report that some employees were specifically told not to reveal that they had received an award. CBP has refused to provide NTEU at the national level with the results of its awards decisions. NTEU has informed DHS that CBP's strenuous efforts to hide its awards decisions make a mockery of DHS's promise that any pay-for-performance system it implements will be transparent and trusted by its employees.

NTEU has received a favorable arbitration decision concluding that CBP unlawfully terminated the joint union-management Awards and Recognition program and unilaterally imposed its own awards system. The arbitrator ordered CBP to return to the prior joint awards process and to rerun the fiscal year 2005 awards process using the negotiated procedure. CBP has delayed the ultimate resolution of this issue by appealing the arbitrator's decision to the FLRA asking the Authority to overturn the arbitrator's decision "in order to improve employee morale."

The disarray in the formulation of the new pay-for-performance program at DHS continues. DHS was slated to move headquarters, Information Analysis and Infrastructure Protection, Science and Technology, Emergency Preparedness and Response and Federal Law Enforcement Training Center employees into the MaxHR pay-for-performance system by February 2006, but has delayed this move until January 2007. MaxHR initial pay changes have been bumped from January 2007 to January 2008.

The proposed pay system lacks the transparency and objectivity of the General Schedule. If the proposed system is implemented, employees will have no basis to accurately predict their salaries from year to year. They will have no way of knowing how much of an annual increase they will receive, or whether they will receive any annual increase at all, despite having met or exceeded *all* performance expectations identified by the Department. The "pay-for-performance" element of the proposal will pit employees against each other for performance-based increases. Making DHS employees compete against each other for pay increases will undermine the spirit of cooperation and teamwork needed to keep our country safe from terrorists, smugglers, and others who wish to do America harm.

One thing is clear. The proposed pay system will be extremely complex and costly to administer. A new bureaucracy will have to be created, and it will be dedicated to making the myriad, and yet-to-be identified, pay-related decisions that the new system would require.

IMPEDIMENTS TO MISSION ACCOMPLISHMENT

The second part of my testimony addresses DHS staffing and personnel policies that have deleteriously affected CBP employee morale and threaten the agency's ability to successfully meet its critical missions.

OPM Survey Results

A recent OPM survey of federal employees revealed that employees rated DHS 29th out of 30 agencies considered as a good place to work. On key areas covered by the survey, employees' attitudes in most categories were *less positive* and *more negative* than those registered by employees in other federal agencies. Employee answers on specific questions revealed that 44% of DHS employees believe their supervisors are doing a fair to a very poor job; less than 20% believe that personnel decisions are based on merit; only 28% are satisfied with the practices and policies of senior leaders; 29% believe grievances are resolved fairly; 27% would not recommend DHS as a place to work; 62% believe DHS is an average or below average place to work; only 33% believe that arbitrary action, favoritism, and partisan political action are *not* tolerated; over 40% are not satisfied with their involvement in decisions that affect their work; 52% do not feel that promotions are based on merit; and over 50% believe their leaders do not generate high levels of motivation and commitment. On the other hand, most employees feel there is a sense of cooperation among their coworkers to get the job done.

The results of this OPM survey raise serious questions about the department's ability to recruit and retain the top notch personnel necessary to accomplish the critical missions that keep our country safe. According to OPM, 44 percent of all federal workers and 42 percent of non-supervisory workers will become eligible to retire within the next five years. If the agency's goal is to build a workforce that feels both valued and respected, the results from the OPM survey clearly show that the agency needs to make major changes in its treatment of employees.

Staffing Shortages at the Ports of Entry

The President's FY 2007 budget proposal requests about $4.4 billion for the Department of Homeland Security's (DHS) U.S. Customs and Border Protection Bureau. This is a 12 percent increase in CBP's budget, but the bulk of the new money is to fund the hiring of 1,500 Border Patrol agents. For salaries and expenses for Border Security, Inspection and Trade Facilitation at the 317 Ports of Entry (POEs), the budget calls for an increase of only $32 million, adding just 21 Full Time Equivalents (FTEs).

According to the GAO, **"as of June 2003, CBP has not increased staffing levels [at the POEs]"** (see GAO–05–663 page 19) and **"CBP does not systematically assess the number of staff required to accomplish its mission at ports and airports nationwide** or assure that officers are allocated to airports with the greatest needs. . .CBP is developing a staffing model. . .however the new model. . .will not be used assess optimal level of staff to ensure security while facilitating travel at individual port and port facilities, including airports."

It is instructive here to note that the former U.S. Customs Service's last internal review of staffing for Fiscal Years 2000–2002 dated February 25, 2000, known as the Resource Allocation Model or R.A.M., shows that the Customs Service needed over 14,776 new hires just to fulfill its basic mission—and that was before September 11. Since then the Department of Homeland Security was created and the U.S. Customs Service was merged with the Immigration and Naturalization Service and parts of the Agriculture Plant Health Inspection Service to create Customs and Border Protection and given an expanded mission of providing the first line of defense against terrorism, but also to make sure trade laws are enforced and trade revenue collected.

Staffing Shortages at the Airports: According to GAO–05–663: *International Air Passengers Staffing Model for Airport Inspections Personnel Can Be Improved,* July 2005, there is much evidence that airports are experiencing staffing shortages. This report was prepared at the request of the House Subcommittee on Immigration, Border Security and Claims, Committee on Judiciary.

CBP has two overarching and sometimes conflicting goals: increasing security while facilitating trade and travel. Prior to 9/11 there was a law on the books requiring INS to process incoming international passengers within 45 minutes. The Enhanced Border Security and Visa Protection Act of 2002 repealed the 45 minute standard; however, "it added a provision specifying that staffing levels estimated by CBP in workforce models be based upon the goal of providing immigration services within 45 minutes (page 12–13)." NTEU believes that staffing levels are not adequate to meet the 45 minute rule while enforcing necessary security measures.

Staffing Shortages at the Seaports: The Dubai Ports sale has recently put a spotlight on the issue of seaport security. The Administration states that the Con-

tainer Security Initiative (CSI) and the Customs-Trade Partnership Against Terrorism (C–TPAT) program are ensuring that 100% of foreign cargo is being scanned for WMD or other terrorist contraband either at the foreign departure port or at the POE. According to GAO–05–557 on Container Security, "CBP has developed a staffing model to determine staffing needs but has been unable to fully staff some ports. . .As a result, 35 percent of these shipments were not targeted and were therefore not subject to inspection overseas." (see highlights page.)

In another GAO report (GAO–05–466T) on Key Cargo Security Programs, GAO found "several factors limit CBP's ability to successfully target containers to determine if they are high-risk. One factor is staffing imbalances. . ." (see highlights page.) At port security hearings in both the House and Senate last month, GAO testified that staffing issues continue to impede the effectiveness of CSI and C–TPAT.

NTEU is gratified and wholeheartedly supports the provisions in the House-passed immigration and border security bill and SAFE Ports Act that authorize the hiring of 1250 new CBPOs at the POEs over the next five years. Without an appropriation to fund these new positions, CBP will continue to be plagued with staffing shortages at the POEs.

Staffing Shortages in Trade Enforcement: When CBP was created, it was given a dual mission of not only safeguarding our nation's borders and ports from terrorist attacks, but also the mission of regulating and facilitating international trade; collecting import duties; and enforcing U.S. trade laws. In 2005, CBP processed 29 million trade entries and collected $31.4 billion in revenue..

Section 412(b) of the Homeland Security Act of 2002 (P.L.107–296) mandates that "the Secretary [of Homeland Security] may not consolidate, discontinue, or diminish those functions. . .performed by the United States Customs Service. . .on or after the effective date of this Act, reduce the staffing level, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions."

When questioned on compliance with Sec. 412(b), then-CBP Commissioner Bonner stated in a June 16, 2005 letter to Representative Rangel that "While overall spending has increased, budget constraints and competing priorities have caused overall personnel levels to decline." The bottom line is that DHS is non-compliant with Section 412(b) of the HSA. As stated in the June 16, 2005 letter, "CBP employed 1,080 non-supervisory import specialists in FY 2001 and 948 as of March 2005." CBP's most recent data shows 892 full-time, plus 21 part-time Import Specialists—913 total employed by CBP.

On March 30, 2006, NTEU-supported legislation was introduced in the House and Senate, S. 2481 and H.R. 5069, that would require the Department of Homeland Security to comply with Section 412(b) of the Homeland Security Act (P.L. 107–296). NTEU urges the Committee to inquire of CBP their plans to become compliant with Section 412(b) and their timeline to become compliant.

One Face at the Border Initiative

The One Face at the Border (OFAB) initiative was designed to eliminate the pre-9/11 separation of immigration, customs, and agriculture functions at US land, sea and air ports of entry. In practice the OFAB initiative has resulted in diluting customs, immigration and agriculture inspection specialization and the quality of passenger and cargo inspections.

Under OFAB, former INS officers that are experts in identifying counterfeit foreign visas are now at seaports reviewing bills of lading from foreign container ships, while expert seaport Customs inspectors are now reviewing passports at airports. The processes, procedures and skills are very different at land, sea and air ports, as are the training and skill sets needed for passenger processing and cargo inspection.

It is apparent that CBP sees its One Face at the Border initiative as a means to "increase management flexibility" without increasing staffing levels. Congress, in the Immigration and Border Security bill passed by the House last year, HR 4437, section 105, requires the Secretary of Homeland Security to submit a report to Congress "describing the tangible and quantifiable benefits of the One Face at the Border Initiative. . .outlining the steps taken by the Department to ensure that expertise is retained with respect to customs, immigration, and agriculture inspection functions. . ." NTEU believes such a report will reveal the serious negative impact on national security of this misguided program.

Law Enforcement Status

The most significant source of consternation for CBPOs, is the lack of law enforcement officer (LEO) status for CBP officers. LEO recognition is of vital importance to CBP officers, CBP Officers perform work every day that is as demanding and

dangerous as any member of the federal law enforcement community, yet they have long been denied LEO status.

Within the CBP there are two classes of federal employees, those with law enforcement officer status and its benefits and those without. Unfortunately, CBP officers and Canine Enforcement Officers fall into the latter class and are denied benefits given to other federal employees in CBP who they work with at 317 ports-of-entry across the country.

A remedy to this situation exists in an important piece of legislation involving the definition of law enforcement officer introduced in this Congress, H.R. 1002, Law Enforcement Officers Equity Act of 2005. NTEU strongly supports this bipartisan legislation introduced by Representatives Bob Filner (D–CA) and John McHugh (R–NY) and has 151 cosponsors to date, including Homeland Security Committee Chairman Peter King (R–NY) and full Committee and Subcommittee Ranking Members Bennie Thompson (D–MS) and Kendrick Meek (D–FL). This legislation would treat CBP Officers as law enforcement officers for the purpose of 20-year retirement.

When law enforcement officers from different agencies join forces on a drug raid or to search a boat for armed smugglers or terrorists, CBP officers are often the only officers on the scene who are not considered law enforcement personnel for retirement purposes. They all face the same dangers and the risk of death or injury, but they don't all have the same rights and status.

CBP Officers carry weapons, and at least three times a year, they must qualify and maintain proficiency on a firearm range. CBP Officers have the authority to apprehend and detain those engaged in smuggling drugs and violating other civil and criminal laws. They have search and seizure authority, as well as the authority to enforce warrants. All of which are standard tests of law enforcement officer status.

Every day, CBP Officers stand on the front lines in the war to stop the flow of drugs, pornography and illegal contraband into the United States. It was a legacy Customs Inspector who apprehended a terrorist trying to cross the border into Washington State with the intent to blow up Los Angeles International Airport in December 1999.

On February 28, 2006, another deadly shooting occurred at a U.S. border crossing, the third in a little more than a month, at Brownsville, Texas, when CBPOs were forced to open fire on the driver of a stolen vehicle who was attempting to flee across the border. At least two CBPOs were involved as the suspect turned the vehicle toward them and tried to run them down in an effort to escape. Earlier in 2006, similar shootouts occurred between CBPOs and fugitives at the U.S.-Canada border in Blaine, Washington, and at the southwest border in Douglas, Arizona.

As in the case of the other two recent border shootings, when local law enforcement officers needed help to capture or stop a suspect, they reached out to CBPOs. CBPOs at our borders are required to carry firearms, are trained in their use and have arrest authority, there is simply no justification for continuing to deny them law enforcement officer status. Terrorists, drug smugglers and fugitives do not hesitate to use violence to avoid being caught and arrested.

Many people do not recognize the sacrifices that CBPOs and Canine Enforcement Officers make for the CBP. Their lives are controlled by their jobs. They rarely work regular 9 to 5 schedules and they have little control over the schedules they do work in any given two-week period. Staffing levels are not adequate to meet the needs of most ports, so Inspectors are frequently asked to work on their days off or to work beyond their regular shifts. The constant strain of performing dangerous, life-threatening work on an irregular and unpredictable schedule has a profound impact on the health and personal lives of many CBPOs. They must maintain control and authority, sometimes for 16 hours a day, knowing that a dangerous situation could arise at any moment.

Given the significance of these jobs, it is vitally important for CBP to be competitive with other state and local law enforcement agencies in the recruitment and retention of first-rate personnel. Recruitment and retention of capable personnel was a preeminent consideration behind Congress' establishment of the twenty-year retirement option for other law enforcement officers and firefighters. NTEU believes the same compelling reasons exist here.

Newer hires to CBP are highly susceptible to the pull of twenty-year retirement benefits and higher salaries offered by state and local law enforcement agencies. They have received costly training and on-the-job experience within CBP, but they know they deserve to be rewarded for the dangers and risks they are exposed to every day. All too often, talented young officers treat Customs as a stepping-stone to other law enforcement agencies with more generous retirement benefits.

No Pay for Saturday Training

Customs Inspectors and CBPOs who received basic training at the Federal Law Enforcement Training Center (FLETC) between January 1, 2002, and October 1, 2004, were not compensated for the sixth day of training for each week during that period. After four years of persistent efforts, NTEU has reached a favorable financial settlement with CBP that will provide appropriate compensation to employees who worked unpaid Saturdays during their basic training at FLETC. But, why would CBP want to get its new recruits off to such a negative start? It is this kind of unnecessarily cavalier treatment of employees that has earned DHS the distinction of being one of the worst places to work in the federal government.

Misuse of National Security Considerations

CBP employees are extremely disturbed by the agency's misuse of national and internal security arguments to justify actions that have no security implications, while ignoring real threats to our nation's security. This issue was dramatically highlighted when it became known that CBP had raised no security questions about the United Arab Emirates owned, Dubai Ports World, buying port facilities in the U.S. Yet, the list of actions that CBP has raised security concerns about is long and ridiculous. Some examples of CBP's misuse of security considerations include:

Warm weather uniforms: CBP argued that wearing uniforms with shorts in very warm climates threatened *internal security.* The Federal Service Impasses Panel (FSIP) found there was no security issue.

Awards: CBP argued that continuing to implement separate negotiated agreements on awards, rather than its preferred single policy would **"increase the risk that potential terrorist, terrorist weapons or components would be undeterred and go undetected resulting in real or perceived harm to our nation's economic stability and /or its citizens."** An arbitrator found no merit to CBP's argument.

Grooming Standards: CBP unilaterally imposed new personal grooming standards that prohibit beards, limit the length, style and color of hair, set standards for fingernail grooming and the amount and type of jewelry. CBP argued that these rules were based on **internal security needs and necessary for the successful functioning of the Agency.** An arbitrator ruled against CBP. CBP has appealed the decision.

Alternative Holsters for Pregnant Officers: CBP discontinued a practice of allowing pregnant CBP officers to use shoulder, rather than waist holsters, arguing it was a matter of **internal security.** CBP's action was upheld.

These are just a few examples of how CBP continues to misuse security considerations to try to justify the unjustifiable. It is particularly disturbing to CBP employees that security concerns are falsely raised on these types of minor issues, yet issues with real security implications, like the Dubai Ports World issue and lack of staffing go unquestioned by CBP.

CONCLUSION

Each year, with trade and travel increasing at astounding rates, CBP personnel have been asked to do more work with fewer personnel, training and resources. The more than 15,000 CBP employees represented by the NTEU are capable and committed to the varied missions of DHS from border control to the facilitation of trade into and out of the United States. They are proud of their part in keeping our country free from terrorism, our neighborhoods safe from drugs and our economy safe from illegal trade. These men and women are deserving of more resources and technology to perform their jobs better and more efficiently.

The American public expects its borders and ports be properly defended. Congress must show the public that it is serious about protecting the homeland by fully funding the staffing needs of the CBPOs at our 317 POEs. I urge each of you to visit the land, sea and air CBP ports of entry in your home districts. Talk to the CBPOs, canine officers, and trade entry and import specialists there to fully comprehend the jobs they do and what their work lives are like.

Again, I would like to thank the committee for the opportunity to be here today on behalf of the 150,000 employees represented by NTEU to discuss these extremely important federal employee issues.

Mr. ROGERS. The Chair now recognizes Mr. John Gage, National President of the American Federation of Government Employees, for your statement. Thank you, Mr. Gage.

STATEMENT OF JOHN GAGE

Mr. GAGE. Thank you, Mr. Chairman. I just—in my travels I visited Anniston two weeks ago, and I must say it was very heartening to see a strong labor relations commitment there, and my 2,700 members down there, and the president, Everett Kelly, wanted me to thank you for your staff work and your just great support for the mission and the employees of Anniston.

Now, DHS. I am beyond giving this Department the benefit of the doubt. I have traveled the country, talked to hundreds of officers, and there is no question, there really shouldn't be any question, why morale is so bad. It starts off with the stupid.

You know, there was a guy—I was out in Houston, and they just did a 10 percent—put up on the board 10 percent of the people have to go over to Customs, 10 percent of the Customs have to go to Immigration. Okay, they put all the senior people on the list, or they went in seniority the wrong way. So a guy comes up to me and says, I am retiring in a month, I am the senior guy on immigration, I am training my replacement on the specific thing that I do. So I said, let me see what I can do.

I had a meet-and-greet with the boss, and so I brought it up with him, and I said, did you know-why did you do this on this inverse seniority? No reason. I said, you know, a guy is retiring in a month, another guy is retiring in 2 months, the training won't even be over before they are retiring, and you have volunteers to do this. And he goes, no, I didn't know that. I said, well, you know it now; can we work something out with this? I have made my decision, that is it. And that was just the story that went around the whole port about how dumb this type of management is.

But the real issues are on money. This agency is nickel and diming these employees every chance it gets. For instance, senior inspectors, they had a provision, AUO, an overtime provision, because they, off their tour, they are investigating and the prosecution of detainees, et cetera, and they have had this benefit for years. And the agency comes in when the Department was formed and said, well, we are taking that away, but we are going to give you this thing called LEAP, which is similar. Then they go and they completely renege on it, give them no AUO, no LEAP. These guys are taking a 15–to 30,000 hit in their yearly earnings.

Now, why the agency goes on these things—for instance, FLAP, which is bilingual pay, and some of our Immigration and Customs people, especially on the southern border, I mean, that is an integral part of their work. They do it more than any other employee, I would say, in the Federal Government. Well, the Customs people have had bilingual pay; the Immigration people did not. We are in litigation with the agency fighting every step of the way not to give this benefit. Similarly, the Immigrations people have a Saturday overtime provision which NTEU and Customs do not, and they dragged NTEU through long litigation, which they finally won, to get this benefit.

These "other than permanent people" who they use for—some of them have worked at the agency 12, 15 years; they are paid a grade 7, yet they are used to do the full range of the job of Immigration Customs, and they say, well, we can't pay you because you are not qualified, but we can order you to do the work. Now, these

folks are saying, if I can do the work, and I have been doing it for 12 years, why am I not being paid for it?

And the inadequate pay that we see across the board, especially when see get to San Diego, Fort Lauderdale, these high-rent places, we are seeing our officers having their families 100 to 200 miles away doubling up and getting small apartments during the week because they cannot afford the price of a house, and yet they are essential employees, and they just can't afford it. The same goes for our agriculture technicians and our agriculture specialists.

But the real answer that has to be put in right now, which our people don't understand, here is my gun, here is my badge, here is my arrest record, tell me why I am not afforded law enforcement status in 6(c) coverage. Now, that one thing would improve morale tremendously, and that one thing would really stop the turnover because that is what the officers are going for. We can't compete in pay with local law enforcement, and they have the benefit of the 6(c) retirement coverage.

And if there is one thing that should be done is that Congresswoman Jackson-Lee's bill really ought to move. This agency can do it right now. They have the authority, and they just bring up nickel, dime reasons why they are not providing these benefits to these very valuable people.

So, Mr. Chairman, I think these three or four issues, really, more communication with people about why decisions are made, and quit fighting them on true law enforcement pay issues that the agency should be willingly giving to these folks instead of making the unions fight, you know, go through lengthy litigation.

So finally I just to want say, this is before MAX HR is instituted. I dread to think what is going to happen when they have increased rights and especially a pay-for-performance scheme that has never worked in law enforcement, and our law enforcement officers, as well supervisors, dread the day when that is going to break up their teamwork in the way they get business done.

Thank you, Mr. Chairman. I would be happy to answer any questions.

Mr. ROGERS. Thank you, Mr. Gage. That was very worthwhile.

[The statement of Mr. Gage follows:]

PREPARED STATEMENT OF JOHN GAGE

Mr. Chairman and Subcommittee Members: My name is John Gage, and I am the National President of the American Federation of Government Employees, AFL–CIO (AFGE). On behalf of the more than 600,000 federal employees represented by AFGE, including 60,000 who work in the Department of Homeland Security (DHS), I thank you for the opportunity to testify here today on the current serious problems at DHS.

As you know, the Office of Personnel Management (OPM) conducted its Human Capital Survey of Federal Agencies from August to December 2004 and released the results in May 2005. An analysis of the results of that survey by the Center for American Progress found that DHS came in dead last of the 30 agencies for employee satisfaction, adequate resources, leadership, working conditions and many other factors. DHS employees have the lowest morale of any group of Federal employees.

This does not come as a surprise to AFGE. In 2004, we had the Peter D. Hart Research Associates conduct a survey of CBP employees for us. That survey found that:

1. Most frontline CBP personnel do not believe they have been given the tools to fight terrorism.
2. Most believe that DHS could be doing more to protect the country.

3. Most have serious concerns about DHS strategies related to their jobs; the majority felt that the "One Face at the Border" initiative has had a negative impact.
4. Most believe that the changes in personnel regulations will make it harder to accomplish their mission.
5. Three in five respondents say that morale is low among their co-workers.

We shared these findings with DHS, but our survey was dismissed as just a union survey—not important. Instead of being alarmed by the results and working with us to address the concerns, DHS instead ignored us and its own frontline employees. The OPM Human Capital Survey reinforced and validated what we already knew from our own poll of the people we represent and from our ongoing communication with them. In addition to the concerns above, CBP employees feel strongly that there are significant inequities within the Department, including the disparity in DHS? recognition of Law Enforcement Officer status.

INTRODUCTION

Since its inception, DHS has not been straightforward or honest in its dealings with its employees, the public, or the Congress. Looking back, we cannot point to a single thing DHS has done right regarding its frontline employees.

Since September 11, 2001, the Bush Administration has taken every opportunity available to advocate for a profound erosion of civil service protections and collective bargaining rights for federal employees. In 2002, the Bush Administration reluctantly agreed with Senator Joseph Lieberman (D–CT) that the creation of a Department of Homeland Security (DHS) was necessary. However, the Bush Administration insisted on a *quid pro quo* for that acquiescence; specifically, that federal employees who were transferred into the new department would not be guaranteed the collective bargaining rights they had enjoyed since President Kennedy was in office. In addition, the Bush Administration insisted that the legislation that was eventually signed into law exempt the DHS from compliance with major chapters of Title 5 of the U.S. Code, including pay, classification, performance management, disciplinary actions and appeal rights, as well as collective bargaining rights.

DEPARTMENT OF HOMELAND SECURITY

On November 25, 2002, President Bush signed the bill creating the Department of Homeland Security (DHS). This law has combined 22 federal agencies and 170,000 employees, 60,000 of whom are represented by AFGE. Most of these employees had been working for the Immigration and Naturalization Service (INS) as Border Patrol Agents, Immigration Inspectors, Special Agents, and Detention and Deportation Officers. AFGE-represented employees from the Coast Guard, the Federal Emergency Management Agency, the Animal and Plant Health Inspection Service (formerly under the Department of Agriculture), the Federal Protective Service, the Chemical, Biological, Radiological and Nuclear Response Assets division of the Department of Health and Human Services, and the Plum Island Animal Disease Center were also brought into DHS.

The Right to Organize

One of the most contentious issues in the Congressional debate on the creation of the DHS related to the authority of the President to deny collective bargaining rights to employees, subdivisions and agencies engaged in national security work. President Bush used this authority early in 2002 to prevent employees of the U.S. Attorneys' offices from organizing. Both because of this action, and fears that the President would abuse this power by excluding all unions from the DHS, AFGE spearheaded an effort in Congress to limit this authority. After a protracted debate, the Congress agreed with the Administration's position on this matter. Since enactment, President Bush has exercised the power to exclude unions from all or part of the Department through his December 2005 Executive Order eliminating collective bargaining rights for all employees of the Office of Investigation in Immigration and Customs Enforcement (ICE).

Personnel Flexibility Provisions

An equally contentious issue during the debate on homeland security in 2002 concerned the supposed need for additional personnel flexibilities in connection with managing employees of the DHS. Section 841 of the Act authorizes the establishment of a new Human Resource Management System and provides the Administration with the ability to modify Chapter 5 of the United States Code in each of the following areas: pay, classification, performance, disciplinary actions, appeals, and labor†management relations. The rationale was to put all 170,000 of the agency's employees under one set of rules and policies. Conveniently ignored was that 60,000 of the 170,000 (more than a third) of those employees, the TSA screeners, would be outside the supposedly department-wide system.

The new law created a process for employee collaboration in the development of the new system, but left the Secretary of DHS with the final authority to impose changes over objections from unions or other employee representatives. In 2003, AFGE and representatives from OPM and DHS spent six months exploring options and debating proposals to address pay, classification, performance, disciplinary actions, appeals and labor-management relations. This was followed by a statutory "meet and confer" process over the regulations DHS proposed. DHS published its final regulations, called "MAX^{HR}," on February 1, 2005. AFGE and others sued to block implementation, and in August 2005, Federal Judge Rosemary Collyer ruled that major portions of the DHS regulations, including those involving collective bargaining, were an illegal violation of the terms set forth in the Homeland Security Act. DHS has appealed the judge's rulings, and thus the fate of the DHS personnel system remains unknown.

Pay System

The DHS personnel regulations provide very little detail about the new pay system for DHS employees, and leave broad discretion in every area. DHS has not yet issued any directives about pay. This raises the real possibility that the salaries of some employees will unfairly lag behind those of other employees in the Federal Government, making it extremely difficult to attract and retain high-quality employees.

Everything we have seen to date indicates that this is a ploy to reduce pay for most DHS employees, resulting in lower standards of living and lower morale. Once this system is implemented and experienced employees start heading for the exit doors, it will be impossible to replace their expertise. The employees of the DHS will quietly, one by one, leave to pursue careers in other agencies that will treat them with the dignity and fairness that they deserve. The real losers in this ill-advised experiment will be the American citizens who are looking to their government for protection. We call on this Committee to revoke DHS' authority for MAX^{HR} and use the funds for better purposes—to increase staff and strengthen frontline border protection.

Collective Bargaining

Under the DHS personnel regulations, the scope of bargaining is so limited that unions will no longer be permitted to bargain over any issues that are even remotely related to operational matters, even though they often profoundly affect these employees who possess a great deal of knowledge about them. In addition, the final DHS personnel regulations reduce DHS' obligation to collectively bargain over the already narrowed scope of negotiable matters by making department-wide regulations non-negotiable. Collective bargaining is currently precluded only over government-wide regulations and agency regulations for which a "compelling need" exists. The final DHS personnel regulations would allow management to void existing collective bargaining agreements, and render matters non-negotiable, simply by issuing any department-wide regulation. The result is that employees will be deprived of their voice in most workplace decisions.

In addition, the DHS personnel regulations transfer responsibility for adjudicating collective bargaining disputes from the Federal Labor Relations Authority (FLRA) and the Federal Service Impasses Panel (FSIP) to an internal DHS Labor Relations Board, whose members are hand-picked by the DHS Secretary with no Senate confirmation. These members are removable only by the Secretary. Meaningful collective bargaining must have independent review and resolution of disputes.

Judge Rosemary Collyer ruled against DHS and found that the final regulations impermissibly limit bargaining and do not provide for an independent third party for dispute resolution, and, therefore, do not ensure collective bargaining as required by the Homeland Security Act.

Employee Appeal Rights

The Homeland Security Act gave the Secretary and OPM Director authority to modify the appeals procedures of Title 5, but only in order "to further the fair, efficient and expeditious resolution of matters involving the employees of the Department." Instead, the final regulations virtually eliminate due process by limiting the current authority of the Merit System Protections Board (MSPB), arbitrators and adjudicating officials to modify agency-imposed penalties in DHS cases to situations where the penalty is "wholly without justification," a new standard for DHS employees that will rarely, if ever, be met.

DHS Went Beyond Congressional Authorization

As mentioned earlier, District Court Judge Collyer agreed that DHS has gone beyond the latitude that the law allowed in both labor relations and appeals. That decision is currently being appealed by DHS.

DHS has claimed that it created a new personnel system that ensured collective bargaining, as required by Congress. But the Court has ruled that it has not ensured collective bargaining, but eviscerated it. DHS has claimed that its regulations are fair, as required by Congress. But the Court has ruled that they are not fair, because they would improperly prevent the MSPB from mitigating a penalty it considered to be too harsh or out of proportion to the offense.

AFGE has no confidence that DHS will be less deceptive or do a better job with the other parts of MAX^{HR} and create and implement fair, credible and workable pay, performance management and classification systems. DHS employees also have no confidence and a great deal of anxiety and distrust about these new systems.

COLLABORATION WITH UNIONS

This distrust did not happen overnight. Let me give you a little background on our involvement in the whole process of developing MAX^{HR}. As you will see, the process was a charade in which employees? views, and the views of their representatives, were collected, and then ignored.

Under the Homeland Security Act, the Secretary of Homeland Security and the Director of OPM were authorized to issue regulations jointly that would establish and describe the new personnel system.

The development of the personnel system involved both a formal statutory collaborative process between unions representing the agencies' rank-and-file employees and agency operational managers and an earlier design process created by the Secretary and the Director.

The Statutory Collaboration Process

The Homeland Security Act required that the new personnel system be created with full participation by elected representatives of the employees.

Under section 9701(e)(1)(A), the Director and Secretary were required to provide their proposal to the employee representatives. The unions would then have 30 days to review the proposal and make recommendations to improve it. After receiving these recommendations, the Director and Secretary were required to give them "full and fair consideration in deciding whether or how to proceed with the proposal."

After deciding how much of the employee representatives' recommendations to adopt and how much to reject, the Secretary and Director were required to tell Congress what recommendations were rejected. The Secretary and Director then were to meet and confer for at least 30 days with the unions, in order to attempt to reach agreement on the points in dispute. The Federal Mediation and Conciliation Service was to assist.

Ultimately, the Secretary and Director adopted regulations over the employees' objections.

The Pre-statutory Design Process

Rather than launch right into the statutory process, the Secretary and Director established a preliminary design process, which included substantial union involvement from April through approximately October 2003.

During this time, AFGE participated in developing options for the new personnel system along with management representatives from DHS, OPM, and other unions. The group, called the Design Team, divided into two sub groups—one focused on Pay, Performance and Classification while the other focused on Labor Relations, Adverse Actions and Appeals. Over the six months that the group operated, it heard from experts in personnel system design from academic institutions, federal agencies, non-profits, and private firms. The members of the group read from the extensive body of literature on human resource systems and contacted organizations in the private sector, the non-profit sector, federal agencies, and state and local governments to learn more about their personnel systems.

In addition to the Design Team, a Field Review Team was established, comprised of union representatives and managers from DHS facilities around the country. The Field Review Team and the Design Team shared ideas and criticisms of the developing materials at these times.

Site Visits, Focus Groups, and Town Hall Meetings

During the summer of 2003, members of the Design Team and top DHS, OPM and union officials traveled to eight cities around the country to hold Town Hall meetings for DHS employees in the area and to conduct focus groups with both management and non-management employees. These visits took place in Norfolk, New York, Detroit, Seattle, Los Angeles, El Paso, Miami, and Atlanta. During the Town Hall meetings, employees were free to ask questions, make comments or express their concerns. And they did, in city after city, speak up and say what was on their minds.

In the focus groups, DHS workers were asked to discuss pay, classification, performance management, labor relations, adverse actions, and appeals—specifically to talk about what works, what doesn't and what might be an improvement. Employees shared their ideas, told us about rumors circulating in their workplaces, and voiced their deep concerns about radically changing a system the vast majority felt needed only small changes to work better.

In fact, the Design Team heard over and over again, both in the Town Hall meetings and in the focus groups, that if the current system were properly funded and carried out, it would work well. DHS employees said it was important for working people to be able to have some confidence in the stability of their income so they could plan for their families? futures. They said that their performance appraisal systems did a poor job of accurately and fairly making distinctions among employees about their performance. They said that favoritism and poor management were big problems where they worked and that giving supervisors and managers more control over their pay was a bad idea. They said they feared what pay-for-performance would do to cooperation, teamwork, and the sense of pulling together for a common mission. They said they wanted to be protected from erroneous or vengeful management actions against them.

While the members of the Design Team were in these eight cities, they also visited several DHS workplaces in the area. This gave the Team insights into the variety of jobs DHS employees perform and an increased appreciation of the vital work done by the Department. At several of the sites, Team members had an opportunity to talk with employees. Once again, the overriding themes were concerns about putting pay decisions, based on subjective performance evaluations, into the hands of managers, pitting employee against employee to win the prize of a higher payout, losing protections against wrongful management actions, and losing the right to have a meaningful say about conditions in their workplaces.

Personnel System Options

Once the Design Team members were back home, work on developing the options started in earnest. The Team brainstormed ideas for options, grouped similar ideas together, and set up committees to begin the work. Out of this process came the fifty-two options that went forward to the Senior Review Committee and then to the Secretary of DHS and the Director of OPM. Regrettably, there was no rigorous attempt to derive the options from the actual research that was done nor to show evidence that such options were likely to be successful or solve real problems in the Federal workplace.

The Senior Review Committee (SRC) included me in my capacity as AFGE National President, as well as the presidents of the National Treasury Employees Union (NTEU) and the National Association of Agricultural Employees (NAAE), top officials from DHS and OPM and technical advisors from universities and the private sector. The SRC met first in July to approve the guiding principles and the process developed by the Design Team. In October, we held a two-and-a-half-day facilitated meeting to discuss the options and various ideas and concerns we all had about personnel reform. While the discussions were lively and informative, there was no attempt to winnow down the number of options to those most palatable to the SRC as a whole; rather, all fifty-two went forward to the Secretary and the Director. In other words, this high level committee was not asked to do the real work of collaboration and try to come up with ideas we could all live with. Instead, it was all for show.

AFGE insisted on being able to participate in this endeavor, as we were assured that the work of the Design Team and the Senior Review Committee would be heeded when DHS and OPM made decisions regarding the new DHS personnel system. In fact, both DHS and OPM involved AFGE well before the statutory collaboration process began. Substantial resources were devoted to establishing and supporting the Design Team, the Field Review Team, and the Senior Review Committee, as well as carrying out the ambitious schedule of Town Hall meetings and focus groups around the country. During the Design Team process there was a genuine sense of collaboration.

That is why we are so angry with the outcome of the process. This anger goes beyond our fundamental disagreement with many of the decisions that made their way into the regulations. We also are outraged that the regulations do not reflect the research that was done by the Design Team, the views and preferences of the overwhelming majority of Town Hall and focus group participants, the bulk of academic research in the field, the more than 3500 comments (a record at the time) sent in by employees and members of the public, or the ideas and objections raised by the Unions during the Meet and Confer process. Ultimately, none of this mattered to DHS and OPM when they developed their regulations.

Employees' Views

As mentioned above, the Design Team heard over and over again, both in the Town Hall meetings and in the focus groups, that if the current system were properly funded and carried out, it could achieve everything the advocates of change professed to want. Both managers and non-managers made it clear that they did not believe that there were terrible problems that could only be solved by radical change. If anything, DHS employees said they feared that problems and disruptions would result from, not be resolved by, such change. Employees said it would harm morale and recruitment for workers to have no stability in their income. By far the vast majority of workers did not believe their appraisal systems or their managers could do a fair and accurate job of paying good employees different amounts based on their performance. They feared that such a system would create a cutthroat environment among employees and harm the Department's ability to carry out its mission. There was absolutely no call from the employees the Design Team researched to make the changes found in the regulations.

Review of Other Employers

Even if one looks hard, one would find little, if anything, in the research done by the Design Team that supports the proposed or final regulations. It is telling that in the introductory explanations to the proposed regulations, the authors do not even pretend that any proposals were drawn from the research or cite any research to support them. Instead they allude to undocumented and unproven allegations about the inability of federal managers to do their jobs under the current system. Indeed, the regulations reinforce the fears employees expressed to us during the site visits and in other communications, namely that the outcome was, for the most part, predetermined and based on the ideological wish lists of certain segments of management and the Administration rather than on any study of the facts.

What does the research documented by the Design Team actually show? It shows that in all the organizations researched by the Team, only New York State has any system in place to evaluate the success of its labor relations program. It shows that the Australian Customs Service has a pay-banding system in which pay, performance and classification plans are negotiated with the employees' unions and become part of the contract. It shows that in Great Britain's Her Majesty's Customs and Excise, there is a pay banding system with 11 bands and pay increases are negotiated with the two unions that represent the employees.

The Design Team research shows that the Kings County Washington Sheriff's Department Personnel Manager does not recommend pay-for-performance for public sector employees. He says it creates three or four months of chaos and resentment and there is no return on investment. It is hard to measure things objectively and counting things like arrests can backfire. It is often the luck of the draw—one employee can have many cases that each take only a short time while another gets a case that takes years to resolve. How do you equalize employees' opportunities to do the things that get them pay increases?

In North Carolina, the Design Team learned that the State Department of Transportation implemented a competence-based system. Unfortunately, the state legislature failed to provide a general increase for state workers so everyone in the Department was given a one-time bonus of $550 and 10 bonus leave days. The research showed that in New York State, pay is negotiated with the employees' unions and there is no pay-for-performance system. In Philadelphia, four different unions negotiate the systems for white collar, blue collar, police, and fire fighters. Classification and pay changes are subject to review by a joint labor-management committee. In the state of Pennsylvania, bargaining unit pay is negotiated and, while employees are not required to join the union, they must pay a fair share if they do not join. There are no pay-for-performance systems.

In Hampton, VA, there is a pay-for-performance system, but it doesn't include police, fire or rescue employees, jobs similar to the core jobs in DHS. They get increases based on training and certification in required skills. In Pierce County in Washington State, half of an employee's pay increase is based on seniority and half on performance. Here too, however, police and firefighters get competency adjustments instead. Riverside County, California has a competency-based pay system for 500 Information Technology employees, which must be negotiated prior to implementation in bargaining units. Employees with more than five years on the job are eligible for a ?Historical Knowledge? competency, similar to a longevity increase, in order to recognize the importance of experience and loyalty.

St. Paul, Minnesota has 26 bargaining units that negotiate pay, performance appraisal systems, and other conditions of employment. Most employees are under a step system similar to the current General Schedule system. Attorneys, however, are under a collectively bargained performance progression system. The Washington

State Legislature recently passed a law that expands the scope of bargaining to include economic issues. At the same time, the legislation called for changing the civil service system. They have rejected the idea of a pure pay-for-performance system as too onerous and contrary to their culture. They plan instead to have a mix of performance awards, incentives, skill-based systems, gainsharing, etc. They said that pay-for-performance should be the last thing implemented, if at all. First you have to have sound classification, pay and performance management systems in place.

According to the Design Team research, the Federal Aviation Administration has a Core Compensation Plan, which is negotiated in bargaining units, including pay. Since the completion of the Design Team process an additional bargaining unit reached agreement on the Plan, but it calls for any Organizational Success Increase determined by the Administrator to be divided equally among the employees rather than more being given to some based on their appraisals. Employees may grieve virtually all pay-setting actions through the MSPB, negotiated grievance procedures for bargaining unit employees, or through what FAA calls its "Guaranteed Fair Treatment Process," in which the employee and management jointly select a neutral third party. We have since learned that 2000 FAA employees filed a lawsuit because they had not received a pay increase for three years.

The Bureau of Alcohol, Tobacco, Firearms and Explosives has a pay-banding, pay-for-performance demonstration project that involves only its scientific, technical and engineering positions. The FBI has a pass/fail system and no pay banding.

The Federal Deposit Insurance Corporation (FDIC) has a pay system that is collectively bargained. They used to have a pay-for-performance system tied to appraisals but abandoned it and replaced it with a pass/fail system. They found that the amount of pay differences based on differences in performance was too small to justify the administrative costs of running the program. They are replacing it with a program in which at least one-third of the employees will be recognized as top contributors and receive additional 3% increases. The Board of Governors of the Federal Reserve System has a pay-for-performance system that covers mostly professional employees. The Government Accountability Office has a pay banding system in which employees are evaluated on their performance in core competencies. They have since moved to a market-based system. There have been recent reports in the press of dissatisfaction among GAO employees, with some leaving the Office. The Internal Revenue Service has a pay-banding system for managers.

Several small independent agencies have pay-for-performance systems, such as the National Credit Union Administration, the National Security Agency, and the Comptroller of the Currency, the Office of Thrift Supervision, and the Securities and Exchange Commission. Some of the employees of these agencies are represented by unions while others are not. The Design Team research has no information about whether or not any of these systems are successful. The Transportation Security Administration has a core compensation system for non-screeners based on the FAA system. Because of problems with the performance appraisal system, employees received increases equivalent to the GS increase in January 2003 rather than increases based on performance.

The Boys and Girls Clubs of America aims for a bell curve distribution of their performance ratings and bases its employees' pay on them. Boeing has broad bands, with merit pay increases based on performance. In bargaining units, the unions negotiate how much of the increase is guaranteed and how much is subject to performance pay. General Electric has a pay-for-performance banding system for managers—the bulk of the workforce is not included. IBM has a market-driven pay system that allows the top 20% of performers to get increases as much as three times the amount given to the bottom 20%. IBM told the Design Team that it is easy to differentiate the top and bottom performers but it is very difficult to make distinctions among their good employees in the middle. In the Union Pacific Railroad, about 70% of employees get performance cash awards. At PepsiCo, executives and non-union employees are in a pay-for-performance system. The research for Verizon only deals with managers who are in a pay-for-performance system.

None of the research backs up the final DHS regulations or shows that pay-for-performance works in the sense of improving employee performance, lowering costs, and improving recruitment or retention. Not surprisingly, there was no attempt to try to demonstrate any of the alleged virtues of pay for performance. In fact, in response to AFGE requests for any evidence that pay-for-performance improves the quality or productivity of an organization, we were told that this was not the goal. OPM claimed that performance pay was a "fairness" issue. Apparently, according to both OPM and DHS senior leaders on the Design Team, employees resent working hard and having a co-worker, who they believe is not working quite as hard get the same amount of pay.

Maybe this is a problem in headquarters offices. We don't hear this concern from our members who work at the ports and borders, and other federal facilities. Most employees don't waste time stewing about their co-workers. People at the frontlines know who can't do the job (very few) and who can. Beyond that, they know who is better at certain things, who is the go-to person for certain questions, etc. They know that some days you do something heroic and weeks can go by just doing routine things. Add pay for performance to most frontline jobs, and you **WILL** make that belief that workers resent each other come true.

Why implement an entire pay system whose sole justification is to accommodate employees who pout about what a co-worker is paid? What about teamwork and agency mission? Even OPM admits that adopting agency-wide pay for performance is not a solution to managers' disinclination to address the much-hyped problem of poor performers. However, they are basing their recommendations on good employees' supposed belief that they are better than other employees and grousing about not getting a little more money.

AFGE does not believe that poor performers should continue in jobs they cannot or will not do right. Our members do not want to work with poor performers. We believe that managers should bring sub-par performance to an employee's attention, try to find out what is causing it, provide training or other resources, and give the employee time and encouragement to improve. Ultimately, however, if the employee is unwilling or unable to improve, action should be taken to demote, reassign or terminate that employee. We don't see anything in MAX^{HR} that gives us confidence that this will happen any better than it does currently. Of course, there should be fair and independent appeals processes for the employee to challenge the decision. But it is wrong to make the kind of radical and disruptive change DHS is planning because it believes that some good employees worry about what other good employees are making. This is an absurd and puerile basis for imposing a potentially destructive pay system on an entire agency.

Meet and Confer

As required by Congress, DHS and OPM met with the three unions in order to attempt to reach agreement on the points in dispute with the proposed regulations. Rather than enumerate those things that DHS agreed with the unions about and those that were in dispute, DHS chose to withhold that information, thus making the Meet and Confer process less efficient—we weren't able to focus on the most important disagreements. In addition, we weren't able to use the time to deal with the details of the new pay, performance management and classification systems, because DHS had put only vague ideas in the proposed regulations. Ultimately, the final regulations did not reflect the ideas, concerns or suggestions of the unions in any meaningful way. Once again, the process was a sham.

ANALYSIS OF THE PAY, PERFORMANCE MANAGEMENT AND CLASSIFICATION SYSTEMS

Any new pay and classification system should support, not undermine, the mission of DHS. This is only possible with a system that promotes teamwork, rather than penalizes it. Unfortunately, the DHS system fails this basic test.

DHS plans to establish occupational clusters composed of four bands—(1) entry and developmental, (2) full performance, (3) senior expert, and (4) supervisory. With proper design and safeguards we see potential benefits in the establishment of an entry and developmental band. Although it is not clearly specified how such a band would function, we believe that it could be modeled after the current career ladder system, which also is an entry and developmental system leading to a full performance level. With negotiated safeguards, which ensure fairness in moving within and between bands, availability of appropriate training and assignments to demonstrate competence, we could support flexibilities that allow faster movement for those who demonstrate readiness for the next level sooner than a year. If bargained collectively, this is the type of reform AFGE would support as a means of enhancing the operation of DHS.

The current classification system provides a good framework for insuring the important principle of equal pay for substantially equal work. There is absolutely no indication of how these new clusters and bands will meet this important goal. To date, we have not seen even a draft management directive regarding clusters or bands. We do know that the regulations propose that an employee's assignment to a particular cluster or band *will not* be subject to an as yet unspecified DHS reconsideration process. The regulations also state these matters will be barred from collective bargaining. Whether this system will be fair and equitable is anyone's guess—based on what we have seen so far from DHS, we have grave doubts.

We have many concerns about the system of pay adjustments, but foremost is whether or not the adjustments will be funded. Will the Administration and the

Congress fund the increases next year? If they do, will they fund them in the succeeding years? As we all know, today's Congress cannot bind the next one. This is especially troublesome in the DHS proposal for annual performance based pay increases, which, if not properly funded, will only produce a ruinous zero sum game with the perverse incentive to promote a coworker's failure.

The payout system described in the regulations would establish a point system for each employee depending upon his or her appraisal. The system is set up in such a way that one employee does better if more of his or her co-workers do poorly. The value of a payout point is determined *after* employees have been evaluated. If the aggregate amount of "performance" is high, the value of a point is low. If the aggregate amount of "performance" is low, the value of a point is high. The incentive is both perverse and clear: The lower the performance of the organization as a whole, the bigger the raise an employee judged to be a high performer will receive. Someone motivated to work hard for the promise of a big raise will only achieve his goal if management judges the majority of his coworkers to be losers.

The example given in the proposed regulations describes a group of 100 employees for whom the performance pay pool is determined to be $84,390. In this hypothetical group, 30 employees receive a "meets expectations" rating valued at 1 point, 46 employees receive an "exceeds expectations" rating valued at 2 points, and 24 employees receive a "meets excellence" rating valued at 3 points. The total number of points for the group is 194, which is divided into the performance pay pool to come up with $435 as the value of a point. Thus a "meets expectations" employee would get $435, an "exceeds expectations" employee would get $870, and a "meets excellence" employee would get a $1,305 pay increase. But what if there were more "meets expectations" employees or employees who fail to meet expectations and fewer "meets excellence" employees or those who "exceed expectations"? We call this system "compensation cannibalism." It is a dysfunctional environment that encourages backstabbing rather than teamwork, and fairness is nowhere to be found.

We are still waiting for more of the actual details. To date, DHS has only issued a draft Management Directive (MD) on Labor Relations, which was put on hold due to the Court decision, and a final Management Directive on Performance Management, which will not affect bargaining unit employees. We submitted extensive comments on the draft MD and made numerous suggestions that were largely ignored. We can only speculate that the MD that will affect our bargaining units will be similar to the first MD. At this point, we have little confidence that our ideas and concerns about the system as it will apply to bargaining unit members will receive any more serious consideration from DHS than we have seen since we first became involved.

Human Resource literature is full of articles about how difficult and counter-productive pay-for-performance is. Bob Behn of Harvard University's John F. Kennedy School of Government wrote about the pitfalls of pay-for-performance, particularly for government agencies, which cannot promise that their systems will be consistently and adequately funded over time. Behn argues that one risks demoralizing the majority of good workers by singling out a few for rewards—and then finds that, usually, employers cannot pay those employees enough to make it worth the problems. Behn says further, "Government needs to pay people enough to attract real talent. Then, to motivate them, it needs to use not money but the significance of the mission they are attempting to achieve."

The DHS regulations also call for market-based pay. DHS has had a hard time attracting law enforcement officers because often the local police and sheriff's departments offer higher pay, so we understand the attractiveness of the idea to agency management. Our support for the Federal Employees Pay Comparability Act (FEPCA) is well known, and it is above all a market-based system. Indeed, it is odd that the crusaders for pay for performance routinely introduce "market-based" factors as if they were a "new" or "modern" idea that that the current system lacks. But what is the principle of comparability if not market-based pay? And why do pay for performance zealots disparage comparability and then suggest market-based pay as its alternative?

The answer is that market comparability is expensive, and difficult to administer with accuracy because so many federal jobs are unique to the government. One crucial and costly administrative factor is the collection of data that matches federal jobs with jobs in the private sector. Notwithstanding the Administration's insistence that half of all federal jobs are "commercial" in nature and ought to be contracted out since firms already doing similar work are listed in the Yellow Pages, the truth is that job matches for federal jobs are extremely scarce. Most federal jobs are not "commercial," they are inherently governmental and simply do not exist outside the government. For example, the FAA has a market-based system that excludes its

core employees, the air traffic controllers, because, of course, there is no comparable job outside the federal government.

The market also is volatile. The Design Team saw systems in which an employee, whose job is no longer valued as highly in the market as it once was, is left to languish, with little or no pay increases until the market changes, the employee drops below it and needs an increase to catch up, or decides to seek employment elsewhere.

Market studies also can be manipulated to get the results an employer wants. DHS chose not to use the United States Bureau of Labor Statistics (BLS) to do the studies, we believe, because it feared it would not get the answers it wanted. Instead, DHS is using a private contractor to do these studies. The studies are made even more complex because so many diverse jobs are put in the same clusters and bands. Deciding which benchmark jobs to study can skew a band higher or lower in the market.

While AFGE strongly opposes so-called pay for performance, the fact is that it can actually be made worse by allowing some employees to move ahead in terms of pay because of high appraisals, while other employees, with equally high appraisals, are held back because they or their entire occupation are considered to be "over market." This is a worst of all worlds outcome, and one the DHS system seems designed to create.

CONTINUING COLLABORATION

Since the final regulations were published, AFGE has participated in periodic continuing collaboration meetings. These meetings are primarily briefings during which DHS Human Resource staff and contractors tell us where they are in developing the new performance management, classification and pay systems. We were given the opportunity to involve our members in part of the validation process for core competencies in the performance management system last year, and appreciate that involvement. There should, however, be more genuine participation.

Last October, we were invited to attend workshops during which the market matching of benchmark jobs to the private sector were to be validated. These benchmark jobs would be used for the labor market studies that would help inform the determinations of the rate ranges of pay bands, future adjustments of those ranges, and local supplements.

We were eager to be involved and to communicate with our members who hold the jobs in question, because this is such an important key factor in their future compensation and we have a lot at stake in ensuring that it be done right. We were told that we would be advised of when the workshops would be held. After that meeting in October, there was no continuing collaboration meeting until January of this year. At that meeting, we were shocked to find that the workshops had taken place without us, and that the validation process was going forward without our involvement or the involvement of the employees who actually do the benchmarked jobs.

We were told that the decision to involve us directly in the validation process had been reversed. I wrote to the Chief Human Capital Officer objecting to this decision and said:

> Not only is this necessary to carry out Congress' mandate that the new DHS personnel systems be designed and implemented in collaboration with us, but the credibility of the validation process itself is gravely compromised by the lack of involvement of frontline workers. DHS employees already are wary and skeptical about the big changes coming in their pay system. Excluding them is the wrong way to get their buy-in and the wrong way to ensure a valid and credible product.

In response, the Chief Human Capital Officer wrote, "When the time is appropriate, we will share information with AFGE. . ."

Our disappointment and anger with the process of developing MAX^{HR} goes back over three years now. We participated energetically on the Design Team, the Field Review Team, Focus Groups, Town Hall Meetings, and the Senior Review Committee, only to find proposed regulations published in the *Federal Register* that ignored almost all of the research, our ideas, and the views expressed by management and non-management employees alike.

We participated vigorously in the Meet and Confer process required by the law, only to find our proposals almost entirely ignored in the final regulations. DHS employees, their unions, other employee organizations, and the public sent over 3500 comments in response to the proposed regulations—it has been acknowledged by DHS that the vast majority of them were negative—only to find their views almost entirely ignored in the final regulations. This has been collaboration in name only.

Homeland Security Compensation Committee

As we have stated, our experience with the continuing collaboration since publication of the final regulations has been that it is cordial and informative, but not the substantive involvement we believe Congress meant for this process. In addition to our disappointment at not being involved in the early stages of market matching, we are deeply concerned about the failure to establish the joint committee that was supposed to be overseeing the entire process of designing these systems. The final regulations call for a Homeland Security Compensation Committee, which includes four Union Officials as members that will:

> . . .provide options and/or recommendations for consideration by the Secretary or designee on strategic compensation matters such as Departmental compensation policies and principles, the annual allocations of funds between market and performance pay adjustments, and the annual adjustment of rate ranges and locality and special rate supplements.

This Compensation Committee has not yet been established—we have not even been made aware of any draft Management Directive establishing its rules or membership. AFGE understands that some of the responsibilities of the Committee will come into play later, such as the annual decisions regarding pay adjustments and allocations. But we do not understand how or why the Department has been able to spend time, resources and money working on compensation matters before a Homeland Security Compensation Committee, including the four Union Officials, has been established and has recommended to the Secretary the compensation policies and principles that will be the foundation of the system.

The MSPB submitted a report to the President and Congress earlier this year entitled *Designing an Effective Pay for Performance Compensation System.* The MSPB report discusses the importance of an agency evaluating its readiness for pay for performance, including key decision points the agency should consider. These essentially equate to the policies and principles of the system, such as goals—is it to improve organizational and individual performance? Is it to better recruit and retain employees? Is it to have a fairer compensation system? Who should be covered by the system and will the same system work in all components of the organization? Where in the market does the organization want to pay—in the middle or be a market leader? These are just some of the policies and principles the Compensation Committee should have considered and made recommendations to the Secretary prior to so much work going into designing the system.

We fear that as we have seen so many times before with the Department's approach to involving its employees' representatives, the Homeland Security Compensation Committee will just be a body that rubber stamps the work of the contractors and Human Resources staff, with the union members allowed to submit a minority report that will be ignored.

DHS EMPLOYEE MORALE AT DEVASTATING LOW

The MSPB report outlines important factors necessary for an organization to succeed in pay for performance. In assessing their readiness for pay for performance, the Report suggests that agencies look at whether:

- Open, two-way communication is valued and pursued.
- Trust exists between employees and supervisors/managers.
- Human resources management (HRM) systems such as selection, training, and performance evaluation have clear and consistent objectives and support pay for performance.
- Employee efforts support organizational goals.
- Work assignment, evaluation of performance, and distribution of awards are fair.
- Assessment of employees is fair and accurate.
- Employees receive timely, accurate, and meaningful feedback.

During the Design Team process, the focus groups and Town Hall meetings, the comments to the proposed regulations, and in our own more recent meetings with our bargaining units, employees of DHS have answered a resounding "NO"! And, in OPM's Human Capital Survey of Federal Agencies in 2004, DHS came in last of the 30 agencies surveyed on these very factors. The Center for American Progress, which analyzed the OPM data, said:

> Less than 40% of the department's employees agreed or strongly agreed with the statement, "My organization's leaders maintain high standards of honesty and integrity." Less than one-third of the employees agreed that "Arbitrary action, personal favoritism and coercion for partisan political purposes are not tolerated," while only a little more than a quarter concurred with the statement, "In my Organization, leaders generate a high level of motivation and commitment in the workplace."

> Only four in 10 DHS employees felt that they could "disclose a suspected violation of any law, rule or regulation without fear of reprisal" while less than one-third felt that "Complaints, disputes or grievances are resolved fairly. . ." Less than half of DHS employees felt that *"Discussions with my supervisor/team leader about my performance are worthwhile."*

It is hard to imagine an organization less well suited to moving to a pay for performance system. Clearly, gutting collective bargaining and diminishing employee rights will only push DHS even further in the wrong direction. The Center for American Progress goes on to say:

> Managers at DHS appear to have failed completely in developing rapport with the agency workforce. The level of employee discontent evidenced by this survey creates the type of situation in which those federal workers with the highest skill levels, who are most attractive to other employers, are likely to leave the department and perhaps the federal workforce.

Concerning the revised personnel rules, the Center said:

> Whatever one might think about the merits of these proposals in theory, it is painfully obvious that the enhanced administrative authorities that were granted to departmental administrators were handled poorly, not only to the detriment of DHS employees, but the public, and in particular the taxpayer.

As mentioned above, our own survey of CBP employees showed the same results as the OPM survey. Is it any wonder that morale is so low among DHS employees?

RECRUITMENT AND RETENTION

When all is said and done, what matters most to the American people is that the Department of Homeland Security carry out its critical mission and prevent further terrorist attacks on U.S. soil. The details of how that mission gets accomplished must be worked out here: in the halls of Congress and at DHS. And we need to get it right.

In our view, most of what has been discussed in connection with the MAX^{HR} program will have the effect of forcing out the longest serving, most experienced and most capable individuals now serving in the U.S. government. They will be replaced by young and inexperienced people, whose most important skill will be the ease with which they fit into the "command and control" environment DHS management seeks to emulate. Such a structure may breed good soldiers, but on U.S. borders, the war on terrorism is fought best by experienced, independent thinking law enforcement officers.

AFGE proposes a different approach. Instead of forcing a system on employees without their agreement, why not try creating a system that maximizes the talent and experience of front line workers? Instead of treating people like inanimate gears in a machine, why not utilize the common sense, on the ground, day-to-day experience of these men and women to create a truly effective model of government efficiency and effectiveness? Unless there are fundamental changes in the Administration's approach to managing its employees, both hiring new employees and keeping valuable, experienced workers on the front lines will become impossible. These people are free to leave an unsatisfactory situation. It is our job to keep their jobs competitive.

In that context, it should be noted that as recently as March 27, in an article entitled "Police Finding it Hard to Fill Jobs," the Washington Post reported that Police departments around the country are contending with a shortage of officers and trying to lure new applicants with signing bonuses, eased standards, house down payments and extra vacation time. These benefits and bonuses are all in addition to the law enforcement retirement benefits most state and local police departments offer.

In my own travels around the country meeting with DHS employees, I have been struck by the extreme difficulty many are encountering in trying to live and raise their families in high cost areas on pay that is not competitive. Dedicated employees, who work for DHS, have told me that in order to find affordable housing for their families, they are forced to live so far away from their duty stations that they live out of their cars for days in order to be at work on time. This is a critical problem that needs immediate solutions, such as housing allowances to attract and retain the workers we need.

As a first step, AFGE urges this committee to take a hard look at legislation introduced last year by Rep. Sheila Jackson-Lee (D–TX). This bill, H.R. 4044, the Rapid Response and Border Protection Act of 2005, would address long-standing problems that have hampered the effectiveness of front line Border Patrol Agents, CBP Officers and other federal law enforcement employees. It also would allow for a new beginning in labor relations with the Department of Homeland Security by repealing those sections of the Homeland Security Act that called for the promulga-

tion of the MAX^{HR} regulations. This would provide all parties with a fresh start in developing a system that can truly be called a visionary plan for the 21st century.

Law Enforcement Officer Status

The bill includes the text of legislation long advocated by Rep. Bob Filner (D–CA) in H.R. 1002 to provide full law enforcement retirement benefits (6c Coverage) to all federal officers required to carry a gun and wear a badge. In the case of DHS Customs and Border Protection Officers, I can assure you their role goes far beyond that.

According to statistics released by CBP in 2004, in 2003 CBP Officers intercepted 483 suspected terrorist/security violators, arrested 17,618 criminal aliens, and seized 72,398 fraudulent documents. In all, CBP Officers arrested and detained over one million people seeking to enter the U.S. illegally in that year. Every one of those detentions and arrests is fraught with the risk of physical danger, which is why CBPOs are armed and fully trained to handle dangerous situations. It is also why the names of forty-three courageous U.S. INS and Customs Inspectors are on the wall memorializing federal law enforcement officers killed in the line of duty. It is unconscionable for CBPOs, who are armed, enforce federal law, and have arrest powers, to be denied law enforcement officer status for retirement purposes.

Equipment, Training, and Working Effectively

H.R. 4044 also includes a long list of items that will guarantee that U.S. Border Patrol Agents and CBP Officers are the best equipped, best trained, most experienced and most motivated work force in the U.S. Government. These include:

- Improved body armor, weapons, night vision goggles and other equipment necessary to carry out the work of federal law enforcement officers responsible for defending the borders;
- Improved training and operational facilities designed to effectively integrate the large numbers of new hires expected in both the Border Patrol and among CBP Officers;
- Repeal of the Administration's failed "One Face at the Border" initiative, which is based on the false assumption that the complex laws and regulations for customs, immigration, and agriculture products can be easily administered by the same people; and
- Elimination of the fixed deployment strategy in which Border Patrol Agents are deployed to fixed positions and required to remain in place regardless of what they observe in their area of operation.

Other Than Permanent (OTP)

OTPs are employees of long-standing, who work part-time schedules and fill in when needed because of high workloads or to allow full-time employees to take vacations or deal with family needs. Some of them came out of Customs while others were former Immigration and Naturalization Service employees. There are about 500 of these employees across the country. They are paid at a lower grade than the full-time employees, and some have other jobs. They are experienced and dedicated and provide an invaluable service by coming on board when needed to relieve full-time employees or augment their number. CBP is attempting to do away with these employees, forcing them to be retrained for jobs they are already doing and putting them in permanent jobs that many do not want. By doing this, CBP is hurting these valuable employees, making it harder for full-time employees to take vacations when it works for them and their families, and removing a workforce that actually helps CBP be more flexible. This is wrong. OTPs should be kept on and allowed to continue to do the work they have been doing.

Taken together, these provisions will move us a long way toward what we need to achieve at the Department of Homeland Security ? a Federal agency that carries out its most critical mission and prevents future terrorist attacks on U.S. soil.

"One Face at the Border"

CBP has attempted to establish what it calls "One Face at the Border." The idea was to take the experience and skills of former INS, Customs and Agriculture employees and combine them into one position. In reality, this has been difficult to do—each discipline is very complex—combining them threatens to weaken expertise in all three. In fact, we are starting to see CPB Officer positions offered with specialties in, for example, Immigration law—a tacit recognition of the need for the experience and education of these legacy organizations.

Although on paper DHS advocates for "one face" at the border, many of its actual personnel practices continue to emphasize the differentiation between "legacy INS" and "legacy Customs" officers. Instead of raising CBP employees to the best of the various benefits they enjoyed before, DHS has created a confusing morass of procedures and policies that take away income and rights without replacing them with

anything of comparable value. CBP Officers may be called "One Face at the Border," but they are acutely aware that they are not treated equally, nor do they share the same benefits. For example:

- **Foreign Language Award Program (FLAP)—**AFGE recently filed two grievances on behalf of employees who are not receiving additional pay for having foreign language skills. The Foreign Language Award Program guarantees foreign language proficiency pay for those employees who use language skills on the job in languages other than English. While many officers from legacy Customs have been awarded foreign language pay, the majority of legacy INS officers have not.
- **Administratively Uncontrollable Overtime (AUO)—**When DHS consolidated different groups of employees it re-classified former INS Senior Inspectors as CBP Officers and eliminated their right to a lump sum payment for working overtime. Although the Senior Inspectors? duties have remained the same, their pay has been drastically reduced.

These are just a couple of examples of the differences CBP employees continue to see in their work places, while they are told they are "One Face on the Border."

TRANSPORTATION SECURITY ADMINISTRATION (TSA)

After September 11, 2001, the Bush Administration reluctantly agreed that the terrorist attacks necessitated federalizing airport security functions, but they also insisted that the legislation not allow security screeners the protections normally provided to federal employees. Consistent with this position, then Under Secretary of TSA Admiral James Loy issued a decision on January 8, 2003 which denied the right to collective bargaining to all federal airport security screeners. AFGE subsequently filed suit in federal district court to protest this action, but the courts have to date upheld the Bush Administration. TSA was given the ability to prevent independent oversight of decisions affecting employees, which has left workers with no alternative but to seek remedies from the very management that created the problem in the first place. The power of TSA management is almost totally unchecked.

A statutory footnote in the legislation creating TSA and federalizing the jobs of airport screeners, the Aviation and Transportation Security Act (ATSA), allows the TSA Administrator to create unique personnel policies for the largest portion of the TSA workforce?42,000 airport screeners. Striking examples of the pervasiveness and extent of airport screeners? lack of labor rights include:

- TSA's refusal to honor the First Amendment right of freedom of association, resulting in screeners being fired for simply talking about the union and posting and distributing AFGE union literature during break times.
- TSA has refused to hold itself accountable to the Rehabilitation Act and is therefore not required to make reasonable accommodations for workers with disabilities. This results in discrimination against workers on the basis of their disability.
- Although Congress clearly indicated that the veteran's preference honored by the rest of the federal government also applied to screeners, the TSA has failed to apply veteran's preference in promotion and reduction-in-force decisions. Moreover, even though other federal agencies apply the veteran's preference to both those who retired from the military and those who leave active duty, TSA has redefined what it means to be a veteran—only retired military personnel are awarded whatever veteran's preference TSA management chooses to give.
- Disciplining screeners for using accrued sick leave benefits for documented illnesses.
- Paying screeners thousands of dollars less than promised at the time of hire, because screeners do not have an employment ?contract? with the government, and therefore, no contract protections.
- Denial of enforceable whistleblower protections.

TSA has argued in federal court, before the Federal Labor Relations Authority, and before the MSPB that the language of the footnote does not require the agency to follow the FAA personnel policy or later, after becoming part of DHS, the DHS personnel system with respect to airport security screeners, the overwhelming percentage of the agency's workforce. It is impossible that any legitimate security consideration precludes airport screeners from enforcing their labor rights when current law allows privately—employed airport screeners performing the same duties the protection of the very labor laws denied federal airport screeners, including the right to bargain collectively. Even though federal airport screeners are denied the ability to bring workplace disputes before the MSPB for a fair hearing by a neutral third party, their management supervisors—from screening managers to Deputy Federal Security Directors to Federal Security Directors themselves—can readily avail themselves of the due process afforded by the MSPB.

Screeners should be guaranteed the same workplace securities that other DHS employees and other federal employees enjoy. Denial of the meaningful ability to enforce the most basic of worker rights and persistent inadequate staffing have taken their toll on the screener workforce. Screeners are subject to extensive mandatory overtime, penalties for using accrued leave and constant scheduling changes because of the failure of the TSA to hire adequate numbers of screeners. It is not surprising that TSA has among the highest injury, illness and lost time rates in the federal government. In fiscal year 2004, TSA employees? injury and illness rates were close to 30%, far higher than the 5% average injury and illness rate for all federal employees. As a result of continuing mistreatment of the screener workforce, the ability of screeners to do their jobs is greatly hampered, and public safety jeopardized. Without the comprehensive protections offered by labor laws—including the right to bargain collectively, an established personnel system, and the right to an independent review of adverse personnel actions—airport screeners are subject to the often arbitrary and constantly changing personnel policies dictated by the Federal Security Directors working at 425 airports across the country. Congress should repeal immediately the ATSA footnote and restore to federalized screeners the labor rights afforded to all other federal workers—at the very least, they should have the same rights as all other DHS employees.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

Currently, FEMA is bearing the brunt of harsh criticism for its response to Hurricane Katrina. There are even calls for it to be dismantled. In 1992, FEMA came under attack for its handling of Hurricane Andrew. Instead of being dismantled then, a professional emergency manager, James Witt, was appointed to rebuild the agency. Witt turned the agency around. In fact, the name "FEMA," which had come to symbolize incompetence and bureaucracy at its worst, soon came to denote excellence in the public's mind. FEMA was used as an example of a high-performance agency and Witt was invited to speak about the remarkable transformation of his agency at conferences.

What are the factors that Witt used to build an effective, responsive agency that worked so well? Here are a few:

- Disaster prevention, preparedness, response, and recovery were grouped together in one agency so that staff of those functions could quickly work together in a crisis.
- The top positions at FEMA were held by experienced emergency managers.
- The Federal Response Plan was clearly written in plain English and allowed FEMA to draw on every agency of the Federal Government in an emergency.
- The FEMA Director had direct access to the President.
- An emphasis was placed on training and keeping experienced staff who would be ready to respond to an emergency on a moment's notice.

There is no doubt that more recently there has been a crisis of leadership at FEMA. It is this crisis that led to the woefully inadequate response to Hurricanes Katrina, Rita and Wilma last summer. It is also true that many FEMA employees are demoralized and some have left. But the agency still is staffed by some of the most dedicated, motivated, and talented professionals in government, who want to be able to do their jobs and protect American lives and property.

We know what works. We saw what was able to be done in the 1990's. Rather than do away with FEMA, we should restore it to its past excellence by getting it out of Homeland Security, making it an independent agency, and giving it the leadership and resources it needs to once again be a model government agency.

CONCLUSION

AFGE calls on Congress to restore to DHS employees the important rights and protections eliminated by the new personnel regulations promulgated by the Department. In particular, we urge you to restore due process and collective bargaining rights to DHS employees. In addition, Congress must ensure that overall pay levels for DHS employees are not reduced compared to those under the General Schedule in other federal agencies.

It would be a grave mistake to view the new DHS personnel system regulations simply as an arcane set of rules governing such mundane issues as pay rates, civil service protections and collective bargaining rights for employees. To do so greatly diminishes the importance of these changes on the readiness of the nation to prevent another terrorist attack or respond to natural disasters like Hurricane Katrina. Unlike most federal agencies, the core mission of DHS is the safety of the American public, and the fundamental changes to the personnel system for DHS workers must be viewed through that prism. The funds going to develop and implement MAX^{HR} would be far better spent ensuring adequate staffing, training, and equipment to protect public safety.

Without a doubt, dedicated and experienced personnel are America's most invaluable resource in the war on terror. No technology can replace their perseverance, expertise, and ingenuity. Keeping these employees motivated to remain in the service of our country is not simply a matter of fairness to them, but is also absolutely essential to the protection of our nation against the threat of terrorism and the consequences of natural disasters. The new DHS personnel system completely fails to achieve that goal and it must be repealed or substantially modified by Congress in the interest of homeland security.

Mr. ROGERS. The Chair now recognizes Mr. Charles Tiefer, professor of law at the Baltimore School of Law, for his statement. Welcome.

STATEMENT OF CHARLES TIEFER

Mr. TIEFER. Thank you, Mr. Chairman, and I thank the committee for the opportunity to testify.

I have written on Federal personnel and procurement policy as a professor for the last 11 years, and for the 11 years before then I was acting general counsel and solicitor of the U.S. House of Representatives and took part in oversight on personnel and procurement such as you are doing today.

For this testimony I reviewed many studies, including the scholarly studies about pay-for-performance implementation, and these showed four major ways that the problem of creating an entirely new procurement system, MAX HR, from scratch sets back integrating DHS. And some of them have been talked about by the first panel already today.

First, MAX HR throws away one of the few aspects that the diverse unit that came together in this Department had in common. To the extent relevant, they were all under the same government-wide personnel system, the General Schedule, the GS, and that was and has been a unifying element. MAX HR will take away the unity, the transparency and the security of having that particular consistent personnel system, and, instead, the employees will receive a bewildering and insecure for them personnel policy situation.

Second, DHS has larger organizational problems that it should be paying attention to, and that will keep it from being able to implement anything as challenging as MAX HR. The statements about the high level of management vacancy by the Chair and by the Ranking Member and the questions of the first panel show that you are already on top of this, and I don't even need to say what I have intended to say. They have a big problem in filling management vacancies, and they should be paying attention to that rather than changing their personnel system.

Third, MAX HR is trying to launch pay-for-performance without many of the elements that are needed for success of such a system. I have cited in my testimony the leading survey by the Kennedy School of Government of the literature on the subject of pay-for-performance. These are elements like a period of mission stability to develop a set of performance criteria and to work them out between managers and employees so that they will address the employees' very natural concerns of shifting to this. DHS is the opposite of a stable situation where that can be worked out.

And fourth, MAX HR is drawing away the vital, but limited, attention and funding that DHS managers can devote to personnel

needs. And the questioning by the members of this committee of Mr. Prillaman brought that out very strongly. The particular example that I focus on is procurement officers. It is the area of law that I specialize in.

During your questioning, Mr. Prillaman admitted that they are trying to find procurement officers to hire. I will tell you I have been hearing this for years now. DHS has been saying for years—it is going to almost sound like they have been saying it before it was DHS. Let's just say for as many years as it has been DHS, they have been saying, we are trying to hire, we are trying to hire, and they have not made progress. I have some statistics I brought together in my testimony that show that they are extremely thin, that they have a much lower ratio of procurement officers to millions of dollars spent on procurement than comparable agencies. So they can't do oversight, they can't do competition when they let out contracts, they can't do oversight when they bring them in. That is what they need to be spending their personnel attention on.

I ticked off a few of the striking examples of procurement problems in DHS. The fact that FEMA had to partly abdicate its procurement to the Department of Defense after Hurricane Katrina. The eMerge2 problem that this committee studied; the TSA's billion-dollar telecom contract with Unisys that was ended last December because, in short, it was a flop, and the $3.3 billion ACE system for Customs, which is long overdue and has cost overruns, that is what they need be to turning their attention to.

Thank you, Mr. Chairman.

Mr. ROGERS. I thank you.

[The statement of Mr. Tiefer follows:]

PREPARED STATEMENT OF PROFESSOR CHARLES TIEFER

CONTINUING ON WITH MAXHR WOULD FURTHER SET BACK THE CHALLENGE OF PULLING DHS TOGETHER

Thank you for the opportunity to testify on the subject of the human capital issues in the Department of Homeland Security (DHS). I am Professor of Law at the University of Baltimore Law School since 1995, and the author of a number of pertinent law review and journal studies, and book sections, on federal personnel and procurement policy.[1]

I. Executive Summary
II. MaxHR Will Set Back DHS Integration
III. Hiring and Training at DHS, Especially As to DHS's Troubled Procurement, Could Use the Attention and Funding Overly Diverted to MaxHR.

I. Executive Summary

DHS faces a central daunting challenge of "integrating" itself—pulling itself together from many units—in just a few years. DHS is the largest department to come together since the Department of Defense in the late 1940s, and it consists of almost a dozen principal units of different natures originating in many different departments. Recent developments have made increasingly clear how seriously it sets DHS back in this goal of integrating itself, to saddle DHS also with the problem of creating a wholly new personnel system, MaxHR, based on pay-for-performance, from scratch.

For this testimony, I have reviewed a number of studies of DHS by the DHS Inspector General, the General Accounting Office, and outside observers, as well as the scholarly studies of pay-for-performance implementation. These show that

[1] These include sections of GOVERNMENT CONTRACT LAW: CASES AND MATERIALS (Carolina Academic Press 2d edition 2004)(co-authored with William A. Shook). In 1984–1995 I was Solicitor and General Counsel (Acting) of the U.S. House of Representatives, and participated in numerous oversight investigations of federal personnel and procurement policy.

MaxHR and DHS have recently shown many problematic aspects which mean that implementing MaxHR has been, and will be, particularly setting back the task of integrating DHS. First, MaxHR throws away one of the few aspects that all the diverse precursor units of DHS have in common: all those units, to the extent relevant, were hitherto under the same government-wide personnel system, the "General Schedule" (GS) for the civil service.[2] By continuing on with MaxHR, DHS throws away that one unifying constant, and obliges its employees to set off on a bewildering and insecure personnel policy venture. Second, MaxHR tries to launch pay-for-performance in a situation missing many of the elements needed to have any chance for even minimal success, like a period of mission stability to carefully develop performance criteria, and to work them out between managers and employees so as to damp down the employees' very natural concerns about the dangers of arbitrary and even punitive pay changes.

Third, MaxHR draws away precisely those resources—the vital but limited attention and funding that DHS managers can devote to personnel matters—that DHS desperately needs to use, not to redo the existing pay system, which is not a particular priority, but to fill serious shortfalls in training and hiring, which should have the highest priority. Fourth, the increasingly delays as the courts throw out some flatly illegal aspects of MaxHR mean it has become an even more long-lasting source of uncertainty and morale damage in DHS than ever imagined.

These problems and drains by MaxHR fall upon a department experiencing many other problems, doubling the downsides. For example, DHS, particularly in certain of its most critical subunits, is suffering a major problem with management vacancies. Take a look at the FEMA organization chart and count the boxes essentially vacant and just occupied by acting figures, from the (Acting) FEMA Director himself not yet confirmed by the Senate, and his empty chief of staff post, to the acting directors of the recovery and response divisions and five of the ten regions. Who can afford attention and funding to reinvent the pay system in a department when there are so many vital posts that do not even have anyone with more than "acting" status occupying them?

To address DHS's situation concretely, I have chosen to use the big-money subject of DHS's procurement, and how it has fallen prey to dysfunctional management and workforce problems, to illustrate how little DHS can afford to squander its limited personnel policy resources on MaxHR and how much it should focus instead on the urgent needs of hiring and training. A number of studies and investigations of DHS's procurement have shown the prevalence of those urgent needs: shortages of personnel, inadequacies of training, weak project management, and a feeble Central Procurement Office. The procurement problems particularly show up from reviewing some particular examples: FEMA's having had to abdicate procurement, partially, after Katrina; the fiasco of e-Merge2, the department's computerized finance system, as to which the contractor was recently discontinued; excessive contracts with Alaska Native Corporations, which reflect at best a slack attitude toward competition, if not a thinly-disguised effort at sole-sourcing; and the delay and schedule overruns with ACE, Customs' $3.3 billion long-overdue IT system. These all reflect a department struggling, with a lot of failures, to do its own competitive procurement. What DHS procurement shows is that if ever a new and struggling department could ill afford to squander the attention and funding on an ideological venture like MaxHR that ought to be going to hiring and training in needy areas like procurement, DHS now is that department.

II. MaxHR Will Set Back DHS Integration

A. Deployment of MaxHR Will Do the Opposite of Its Main Claim: Far From Helping to Unify a Diverse Department, It Will Fragment One of DHS's Existing Unities

The proponents of MaxHR argue that it will help unify a diverse department. By making its nine occupational clusters, such as technical or law enforcement, the unit of pay-banded personnel treatment, MaxHR is supposed to "build a unified DHS culture," as the DHS Chief Human Capitol Officer puts it.

There was always less to this claim than meets the eye. Before units came from different departments into DHS, there were many disparate aspects of their culture and nature. But, they had an existing unity by their civil service being classified on the government-wide General Schedule. To be specific: units such as what is now Customs and Border Protection, and what is now Immigration and Customs Enforcement, were created by merging elements of the Justice Department and the Treasury Department. These elements certainly had many dissimilarities. But, their managers and employees shared the common understanding of how the General

[2] A good review of how the General Schedule works is in Major John P. Stimson, *Unscrambling Federal Merit Protection,* 150 Mil. L. Rev. 165 (1995).

Schedule worked, what it meant for their prospects for pay increase and promotion, and how to compare status when put together on assignments. In other words, a GS–12 from one unit might have many challenges figuring out how to work with a GS–13 from another unit, but at least they each understood relatively well where the other fit in the personnel system, and what it would take for the GS–12 to ascend in pay to be in line with the GS–13. MaxHR does not create unity and integration, it fractures one of DHS's existing unities. The predictability and structure of the existing personnel systems, which could translate via the GS's universal language, will now yield to a babble of uncertainty and confusion both within and between units.

Now, however, the plan for deployment of MaxHR prepared by the DHS CHCO shows that MaxHR will not even replace the existing unity of the General Schedule with a new unity, but only with disunited pieces. Of 185,000 DHS employees (when the department was formed), MaxHR will only apply to about 84,000.[3] It will not apply to the TSA screeners; some staff at FEMA; the Secret Service's uniformed division; or the Coast Guard's military personnel. Moreover, it will not apply to the SES employees, who have an existing system separate from the General Schedule. So, MaxHR will "unify" less than half of DHS. That is more fragmenting than unifying.

For those provisions involved in the pending litigation, the disunity is even greater. Most observers assume that Judge Collyer's ruling, which I found fairly straightforward as statutory interpretation, will be largely affirmed on appeal. In that event, the rollout of MaxHR's aspects related to labor bargaining, and adverse actions and appeals, will be limited. The Phase I rollout of MaxHR in 2006–2008 to HQ, FLET, ICE, and USCG will extend those limited aspects (the ones struck down by Judge Collyer) only to 15,000, with the aspects that apply more generally including pay-banding, extending to 25,000. The Phase II rollout of MaxHR in 2007–2009 to CBP, CIS, FEMA, and USSS will extend those limited aspects (again, the ones struck down by Judge Collyer) only to 20,000, with all aspects, including pay-banding, extending to 59,000—for a total over the two phases, as to the more generally applying aspects, including pay-banding, of 84,000. Thus, of the less than half of DHS which will have MaxHR, only a fraction will have the aspects challenged in the litigation; and all this will be coming in different ways to different units at different times. MaxHR is an engine for disunity.

B. DHS Increasingly Shows Itself the Worst Place to Experiment with Pay-for-Performance on a Large, Unheralded Scale

The policy studies on pay-for-performance show many reasons for caution, and many specific conditions needed for it to succeed, while DHS increasingly shows itself the worst place to experiment with meeting those conditions. A comprehensive review of the literature was done in 2003 at the Kennedy School of Government at Harvard by two leading professors.[4] The Kennedy School review concluded that the "conditions" for "[p]ay for performance" to be effective "are often not met in the public sector, in part because of the complexity of the typical government product. . . .the increasing role of. . . cross-agency collaboration, and the social comparisons and internal motivational dynamics of. . .public employees in particular."[5] What could provide more ground for doubting the conditions for pay for performance to be effective will be met, than the conditions today at DHS? DHS has an immensely complex product to produce—not goods or even simple services, but the complex balance of multiple missions of, say, a customs inspector (who will now have immigration duties too) or a Secret Service officer. Cross-agency collaboration is a basic part of the work of many in DHS. And, the motivational dynamics at DHS depend heavily, not upon a pure piecework-minded interest in wages, but upon precisely the "public service motivation" as to which the Kennedy School review said "the reduction of intrinsic motivation through performance-based pay will be a correspondingly bigger problem."[6] DHS is the poster-child example of the place *not* to launch a sweeping experiment with pay-for-performance.

Let us look at just how DHS plans to implement MaxHR. DHS holds out no promise that it will obtain large appropriated sums to provide MaxHR performance bonuses, and also offers no protection against denials of bonuses or even individual pay cuts. Moreover, DHS units include a fair fraction of relatively senior personnel who are already at the upper end of their civil service pay. This gives little reason

[3] From DHS, "Overview of the MaxHR Human Capital Program" (May 2006).

[4] Iris Bohnet & Susan C. Eaton, *Does Performance Pay Perform? Conditions for Success in the Public Sector,* in John D. Donahue and Joseph S. Nye Jr., eds., For the People: Can We Fix Public Service? (2003).

[5] *Id.* at 250.

[6] *Id.* at 246.

for DHS's vital experienced echelons to think that pay scale conversion to MaxHR will precede pay raises. If anything, MaxHR could well generate an exodus from DHS of such experienced employees. That exodus might be the kind of development welcomed in the private sector, where offloading experienced employees from denial of pay raises, and even pay cuts, can raise profit margins by cutting payrolls and replacing senior better-paid employees with junior low-pay ones. However, I seriously doubt whether America will feel safer if MaxHR has that same effect, *i.e.*, less and less experience, and more and more turnover, in its customs and immigration inspectors or in those backing up its Coast Guard or handling emergencies at FEMA.

The current implementation process for MaxHR is particularly worrisome because it is so divorced from employees. DHS has been devoting about $30 million/year to the contract with Northrop Grumman and others to devise the system, an amount cut back from what it requests from appropriators—leaving little reason to think it will have large amounts in hand left over for bonuses. Incidentally, this particular contract was set up as a BPA, a very open-ended basis which means it may well siphon off an increasing share of the funds needed to try to reduce MaxHR's intrinsic unattractive risks for DHS employees. Northrop Grumman is, of course, one of the Big 3 defense contractors. It has been trying to parlay its experience just as a producer of hardware like airplanes for federal defense into handling other matters as well. So it does not bring any long history of experience, or a rich network of contacts, with the personnel systems of Immigration and Customs Enforcement, or Customs and Border Protection, or FEMA.

The Kennedy School review found that "[e]mployees feel losses with disproportionate intensity," just as they feel about comparisons with peers whose pay rises while theirs does not. There is a grave risk in public organizations that "performance can be negatively affected if the process through which the outcomes are achieved is perceived as unfair."[7] Two press reports just this week highlight this problem in trying to have pay-for-performance for federal agencies. The new pay-for-performance system at GAO received adverse comment, because of the negative evaluations: "25-year GAO veterans feel insulted and unappreciated by a ranking system that implies that half of the analysis in his cohort are performing below a satisfactory level despite receiving good performance evaluations."[8] At the Department of Defense, according to a report in the Washington Post's Federal Diary column, the pay conversion tables have created a "tricky" problem about "the perception of equity in the workplace" because it limits some converted GS–14s (supervisors) to $106K while other converted GS–14s (technical experts) may earn close to $125K.[9] In sum, the Kennedy School review was on solid ground in foreshadowing that the shift to pay-for-performance being devised by Northrop Grumman may do more harm than good to DHS employee morale and performance.

III. Hiring and Training at DHS, Especially As to DHS's Troubled Procurement, Could Use the Attention and Funding Overly Diverted to MaxHR.

A. Training, Hiring, and Other Personnel Needs as to DHS Procurement Compete with MaxHR

The real cost of MaxHR to DHS can only be appreciated from seeing DHS's other, more pressing needs for the scarce attention and funding for personnel matters spent on changing the pay system. Let us start with the training shortage. DHS did accomplish the making of a human capital strategic plan, in October 2004, and a departmental training plan, in July 2005.[10] However, this dealt largely in generalities: as a GAO evaluation found, "The DHS training strategic plan contains few specific performance measures for its goals or strategies and all of these are output measures."[11]

Meanwhile, a tour through DHS turns up many training or hiring shortfalls:

—A 2005 report by the DHS Inspector General said the Transport Security Administration must improve its training for airport screeners.[12] A TSA training program for screeners was handicapped, a GAO study found, by insufficient

[7] *Id.* at 248.

[8] Florence Olsen, *"Ticked Off" About Pay at GAO,* Federal Computer Week, May 15, 2006.

[9] Stephen Barr, *Pentagon Workers Able to Get a Boost Under New Pay Tables,* Wash. Post, May 11, 2006.

[10] Department of Homeland Security Learning and Development Strategic Plan.

[11] General Accounting Office, *Department of Homeland Security: Strategic Management of Training Important for Successful Transformation* (Sept. 2005).

[12] *Airport Screeners Need to Be Empowered, Not Privatized, Government Employee Union Says,* 47 Gov't Cont. 243 (May 25, 2005).

staffing at many airports coupled with a lack of high-speed Internet availability.[13]

—The GAO found bomb-making materials could be sneaked thru all 21 airports tested, suggesting screeners were not receiving the right kind of training (or equipment).[14]

—A report in December 2005 report by the DHS Inspector General on DHS's major management challenges found that DHS had "a shortage of certified program managers to manage the Department's 110 major programs."[15]

—Studies by the GAO, the DHS IG, Congressional committees,[16] and the press[17] all found striking training deficiencies underlying FEMA's flawed response to Hurricane Katrina. Notably, an April 2006 comprehensive IG study found a steep decline in FEMA top-level training: "Overall, FEMA enrollments in professional developed courses, which include leadership and managerial training, decreased significantly in the past ten years. For example, in 2005 only 25 percent of its employees were enrolled in such programs when compared to 1995 levels."[18]

Procurement is a legitimate focus for looking at personnel problems at DHS, considering the scale of DHS's procurement activity—DHS purchased almost $9.8 billion of goods and services in fiscal year 2004, in almost 60,000 procurement actions (not including credit card buys).[19] The DHS IG found: "DHS's close relationship with the private sector resulting from its many partnership arrangements, raises concerns that the minimal initial and annual Government ethics training may be insufficient to address standards of conduct issues as they apply to procurement."[20]

A well-known former senior procurement figure of the current Administration, Angela Styles (formerly administrator of the Office of Federal Procurement Policy), told of an experience as to how weak DHS training was leading to weak DHS ethics:

> Styles recounted her experience with an employee from a large IT firm who, while meeting to discuss the company's bid for a Department of Homeland Security contract, mentioned casually that he had drafted the DHS statement of work. "Everybody in the room except this person was shocked," Styles said. "They knew it was a problem for the same company to draft the statement of work and bid on the contract." . . . . DHS needed the contractor to draft its statement of work, according to Styles, because no federal employee was capable of drawing specifications for the particular IT project.[21]

Some may question whether to view MaxHR as truly competing with hiring and training for scarce personnel resources at DHS. Unfortunately, there is no other way to view the radical step of replacing the existing personnel system with a new one, particularly a new one that is intensely draining, both permanently and especially in its initial years, of supervisors' attention. MaxHR requires both supervisors and employees to be quite re-trained, the supervisors in how to rate and to communicate with employees so that the pay-controlling performance ratings will generate the least friction, the employees so that they will accommodate themselves to the strange new system.

Moreover, as it goes into effect, MaxHR requires supervisors to give high levels of attention to the kind of rating and communication required for pay decisions. In fact, an article this week noted that supervisors at the Defense Department thought

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[13] GAO, *Aviation Security: Screener Training and Performance Measurement Strengthened, but More Work Remains* (May 2005).

[14] The GAO report was classified. It was first aired on NBC Nightly News on March 16, 2006, followed by a number of print press discussions. See *http://www.msnbc.msn.com/id/11878391/*; *Critics: Mismanagement to Blame for TSA Lapses,* Federal Times, March 27, 2006, at 8.

[15] DHS OIG, *Major Management Challenges Facing the Department of Homeland Security* (Dec. 2005), at 112.

[16] Aimee Curl, *Senate Panel Unlikely to Recommend Taking FEMA Out of DHS,* Federal Times, March 13, 2006, at 9 (discussing testimony at Senate hearing about the need for better FEMA training); Stephen Losey, *FEMA Ignored '04 Memo, Lost Ground in Katrina Response,* Federal Times (Dec. 12, 2005), at 4 (discussing testimony that a FEMA coordinating officers had circulated a June 2004 memo that "raised concerns that FEMA's national emergency response teams were unprepared and ill-trained").

[17] Mollie Ziegler, *Federal Volunteers Cite Flaws in Katrina Effort,* Federal Times, Jan. 30, 2006, at 1 (about faulty training given to volunteers from DHS and from other agencies to help after Katrina).

[18] DHS OIG, *A Performance Review of FEMA's Disaster Management Activities in Response to Hurricane Katrina* 122 (March 2006).

[19] DHS OIG, *Department of Homeland Security's Procurement and Program Management Operations* (Sept. 2005), at 2, 20.

[20] *Id.* at 3.

[21] *Developments: Rules on Blended Workforce Lack Clarity, Acquisition Experts Say,* 42 Gov't Cont. para. 473 (Nov. 9, 2005).

they should get a pay raise just for the increased amount of such supervisory work the new system demanded. Supervisors and employees alike have just so many hours in the week for training and personnel matters apart from their regular work. They can either spend them training and dealing with MaxHR, or, they could spend them on training and hiring for such needs as screeners' need for more security training on bomb-making materials, FEMA officials' needs for more training on emergency handling, or contract managers' need for more training on competitive and ethically honest procurement.

B. Dysfunctional Procurement

A few concrete examples will show the kinds of dysfunctional procurement at DHS resulting from its deficit of hiring and training.

Quite a number of hearings have already been held just on the procurement problems in FEMA's response to Hurricane Katrina. In the week after the hurricane, FEMA awarded a series of large no-bid contracts (on the order of $100 million) to companies with political connections. Thereafter, FEMA began shifting the burden of a sizable amount of its contracting to Defense Department personnel, in two respects. It immediately turned $1.5 billion in contracting over to the Army Corps of Engineers,[22] ostensibly involving engineering, although it also turned out to involve basic commodities and even portable classrooms.[23] And, the Army Corps tapped into contracts of other military services.[24] Second, the Defense Department assigned some contract management support staff to FEMA.[25] FEMA simply could not do its procurement job; it had to turn its job over to the Defense Department.

Some might excuse that as just a super-emergency situation, not representing a DHS problem with broader implications. However, the indications in the studies by the DHS Inspector General of the procurement personnel problem are that this problem is hardly isolated. For its September 2005 study of procurement operations, the DHS IG compared levels of procurement staffing among the different units of DHS, and between DHS and other departments. It found average procurement spending per employee ratios, according to two outside studies, of $5.3 million (one study), or alternatively $6.3 million to $8.8 million (another study), in other federal agencies with similar buying profiles. "DHS' average spending per procurement employee of $12—$13 million is significantly higher than either of these studies with some DHS offices spending an average of $25—30 million per person."[26] That is an alarmingly thin level of DHS procurement personnel.

The DHS IG confirmed the disturbing implications of this inadequate level of DHS procurement personnel from what he had been repeatedly told by the procurement personnel themselves. "Many procurement offices have reported that their lack of staffing prevents proper procurement planning and severely limits their ability to monitor contractor performance and conduct effective contract administration."[27]

Adding to the dangers of DHS's inadequate procurement workforce is DHS's inadequate Office of Chief Procurement Officer (OCPO). The subheading of the September 2005 DHS report on this subject says it all: "OCPO Lacks Sufficient Staff and Authority to Conduct Effective Oversight."[28] At one recent time, the GAO found that OCPO had only two people to conduct oversight on the eight separate procurement offices in DHS. It was supposed to obtain five more, but even if that occurs, both GAO and IG found that OCPO "has unclear authority to ensure compliance with DHS procurement policies and procedures."[29] So, the move to MaxHR means DHS management must devote its precious capacity to exert central leadership to changing the department's personnel/pay system, instead of trying to get oversight over a set of overwhelmed very-high-risk non-centrally-supervised procurement offices handling large sums of money.

C. Examples of Procurement Workforce Problems, Outside FEMA

eMerge2

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[22] Leslie Wayne, *Expedited Contracts for Cleanup Are Testing Regulations,* New York Times (Sept. 13, 1005), at C4.

[23] Kevin McCoy, *Contract for Portable Classrooms Scrutinized,* USA Today (Oct. 21, 2005), at 6b (contract review requested of GAO for $39.5 million no-bid Katrina contract; Army Corps passed up local contractors willing to supply the classrooms for half the price, in favor of Alaska Native Company).

[24] Renae Merle, *4 Firms Hired to Clear Debris in Gulf Coast,* Wash. Post (Sept 16, 2005), at A20.

[25] Chris Gosier, *OMB Eyes Hurricane Relief Contracts,* Federal Times (Oct. 17, 2005), at 4.

[26] DHS OIG, *Department of Homeland Security's Procurement and Program Management Operations* (Sept. 2005), at 7.

[27] *Id.* at 7.

[28] *Id.* at 7.

[29] *Id.* at 8.

A detailed press article this year entitled *"Security for Sale,"* had the subheading: "The Department of Homeland Security has a Section on Its Web Site Labeled 'Open for Business.' It Certainly Is."[30] The article assembled many examples, some well-known within the procurement community, of contractor exploitation, often facilitated by lobbyists, of lax standards at DHS. Its examples draw on, and mesh with, the previously-quoted studies by the DHS IG, GAO, and Congressional Committees. For example, earlier a recent IG report was quoted about the inadequate controls and personnel in DHS's central procurement office. *Security for Sale* quotes Clark Kent Ervin, who served as DHS inspector general until the end of 2004 as follows:

> The controls recommended by Ervin included hiring more procurement staff with deeper experience. The DHS procurement office, he said, had "so few people expert in contract procurement, the private sector was able to take the department for a ride." Referring specifically to contracting abuses at TSA, Ervin added that there was a "loose attitude regarding money."[31]

Security for Sale develops usefully one particular example about which this Committee has recently held important hearings. It describes how the company BearingPoint, formerly known as KPMG Consulting, obtained the 'eMerge2' contract. "In 2004, after signing on with Blank Rome, the company won three major DHS deals: a $229 million contract for its 'eMerge2' software, designed to integrate the financial management of the department's 22 component agencies [and 2 other contracts]."[32] Blank Rome was a Philadelphia lawyer-lobbyist firm extremely well connected to the DHS Secretary, Tom Ridge of Pennsylvania.[33]

There was reason from the beginning to be skeptical of the BearingPoint contract. At the very moment that DHS awarded the eMerge2 contract to BearingPoint, another federal agency, the Department of Veterans Affairs, was canceling a computer systems integration contract with BearingPoint for a Florida VA medical center after paying BearingPoint $117 million, and the State of Florida was canceling a similar $173 million with BearingPoint and Accenture.[34] More broadly, the technical procurement world grouped BearingPoint's eMerge2, as an enterprise resource project (ERP), as one of the "well-known ERP implosions" as to which "the history of failed ERP projects [are] dotting the federal landscape."[35]

It seems rather blithe for DHS just to walk away from that failure without asking some hard questions of BearingPoint and of its own project workforce. DHS has a painful history of material weaknesses in its component financial statements and financial management systems precisely in the context that the BearingPoint contract was to fix, as GAO reported to this Committee at its March 29, 2006 hearing.[36] DHS depended on that contract for a solution, having chosen the BearingPoint proposal over a rival proposal by established solution-provider IBM—and over simply implementing the internal solution of the Coast Guard's much-praised system. It seems BearingPoint's failure was apparent "within weeks,"[37] yet DHS, having stayed several years with BearingPoint, now finds itself having lost years in this key effort. The failure points up the need for more of its personnel efforts to be devoted to hiring and training so that it can make wise procurements and then manage them effectively, rather than devoting its personnel attention and funding to MaxHR.

Alaska Native Corporations

There has been an emerging problem—some would call it a scandal—in several government departments, as the exception to competitive bidding for Alaska Native Corporations (ANCs), some of which would not be considered true "small" businesses, is overused as a loophole for these departments to make noncompetitive, even sole-source awards. Unfortunately, there are signs that the DHS procurement workforce, with its shortfalls in staffing and training and with some evident vulnerability to political and lobbying pressure, has been yielding to the temptation to make excessive use of the ANC loophole in competition.

Examples include a $500 million Customs Service contract awarded to Chenaga Technological Services Corp., for maintenance of scanning machines at ports and

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[30] By Sarah Posner, in The American Prospect (Jan. 2006).
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] Paul de law Garza, *Critics Question Federal Contract,* St. Petersburg Times, Oct. 7, 2004
[35] Wilson P. Dizard III & Mary Mosquera, *ERP's Learning Curve,* TechNews (Feb. 16, 2006).
[36] Statement of McCoy Williams Before the Jt. Hearing of the Subcomm. On Government Management, Finance and Accountability of the House Government Reform Comm. and the Subcom. On Management, Integration, and Oversight of the House Homeland Security Comm. (March 29, 2006).
[37] U.P.I., *DHS Financial Management Plan Collapses* (April 3, 2006).

borders;[38] and the $39.5 million no-bid post-Katrina contract for portable classrooms by Akima Site Operations (technically arranged by the Army Corps, because FEMA abdicated).[39]

Interestingly, the GAO recently reported on a particular example, a sole-source award by the immigration service to an ANC for operation and maintenance of a detention facility. Apparently, "the contracting officer [said] that awarding to an ANC firm was the quickest and easiest method and avoided competition."[40] That comment speaks volumes about the workforce problems underlying the procurement problem.

TSA-Unisys

Another recently completed audit concerns the Transportation Security Administration (TSA)'s billion-dollar airport telecommunications contract with Unisys Corp. This was the vital contract to rollout an infrastructure so TSA could operate at headquarters and airports nationwide. Unisys' performance was so disappointing that the IG recommended, and TSA agreed, to terminate the contract at the end of the base period and re-bid it.[41] The IG reported that "TSA officials said that they originally estimated that the contract could exceed $3–5 billion, but set the contract ceiling at $1 billion." The contractor ran through 83% of the contract ceiling ($834 million) in less than half the allotted time, and failed to provide TSA with many of the critical deliverables. The shortfalls in procurement officer capacity to oversee the contract are only too clear.

ACE

Customs and Border Protection (CBP) has a program to modernize trade processing for border security called Automated Commercial Environment (ACE), with a lifecycle estimate of $3.3 billion, and which had received almost $1.7 billion by March 2006. ACE has a history of cost and schedule overruns, with GAO examinations in past years identifying the likelihood that the program would continue to fall short of expectations.[42] A recent GAO overview in March 2006 of DHS's lagging IT showed the ACE problems persist due to weak DHS program oversight. To meet deadlines—ACE had just come out with its release #4—increments (releases) that were supposed to be successive were being developed and deployed with what GAO called "significant concurrency" (*i.e.*, more overlap in time than is advisable).

GAO explained the risks with both this "concurrency" and the problem that "the ACE program was passing key milestones with known severe system defects—that is, allowing development to proceed to the next stage even though significant problems remained to be solved." Both of these lead to "schedule delays and cost overruns," "premature deployment," and "a groundswell of user complaints and poor user satisfaction scores with the release.[43] That means that ACE will end up costing more billions, and taking more years, that planned for. A trade association once made the comment about ACE: "Is it ever going to get done? It's beginning to look like the Big Dig in Boston."[44] Now it appears that while it may get done, the shortfalls in procurement oversight will lead to overruns, delays, and customer dissatisfaction.

Mr. ROGERS. Those were great opening statements. I hate that we have to go vote. We will be back in 30 minutes to begin the question and answer period. So thank you very much, and I apologize for the inconvenience. We are in recess.

[Recess.]

Mr. ROGERS. I apologize again for the delay.

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[38] *Investigation of Alaska Native Corporation Contracts Sought,* 47 Gov't Cont. 114 (March 9, 2005).

[39] Kevin McCoy, *Contract for Portable Classrooms Scrutinized,* USA Today (Oct. 21, 2005), at 6B.

[40] GAO, *Contract Management: Increased Use of Alaska Native Corporations' Special 8(a) Provisions Calls for Tailored Oversight* (April 2006), at 18.

[41] DHS OIG, *Transportation Security Administration's Information Technology Managed Services Contract* (Feb. 2006), at 2.

[42] GAO, *Information Technology: Customs Automated Commercial Environment Program Progressing, but Need for Management Improvements Continues* (March 14 2005).

[43] GAO, *Homeland Security: Progress Continues, but Challenges Remain on Department's Management of Information Technology* (March 2006).

[44] R. G. Edmonson, *Slow Going: Funding and post-Sept. 11 Security Features Slow Completion of Customs Computer System,* J. of Commerce, June 28, 2004, at 12 (quoting official of Retail Industry Leaders Association, Jonathan Gold).

Ms. Kelley, I understand that you have a plane that you need to catch, so we will let you address questions first.

And I would just generically throw at you the question I posed first and foremost to the first panel, and that is, what do you think we can do to deal with retention problems in particular, recruitment problems in particular, and morale problems generally?

Ms. KELLEY. You know, I think staffing and the need for more funding for staffing is a huge issue. Everywhere I go employees are working a lot of extra shifts, a lot of extra hours with not much relief—

Mr. ROGERS. So it is the volume of staff—

Ms. KELLEY. Yes, the quantity.

Mr. ROGERS. You need a larger volume of staff.

Ms. KELLEY. And I actually see not so much the recruiting problem as the retention problem. Once employees begin to work at CBP, they recognize a couple of things pretty quickly. They feel that they are not supported in the work they are trying to do, they feel that their ideas and their suggestions of how the Department can do its work better are not tapped into and not listened to. They find themselves in an environment where they are told to do what they are told to do when they are told do to it and how to do it without any recognition of the expertise that they have. And just the zeal and commitment and love of the job that they do—I mean, these are just very dedicated, talented and committed employees with a wealth of background that they bring to this agency, and it is not tapped into. They feel that they are treated not with dignity or respect by their line managers, they are treated more as—

Mr. ROGERS. Do you have objective data to verify that, or is that just anecdotal?

Ms. KELLEY. Well, I have a lot of anecdotal, and I would say it is consistent. If this was coming from one or two places, I would not be making it as a general statement. I travel a lot, and I meet with frontline employees a lot, and everybody I go, without exception, they tell me they are looking for another job, they are actively looking for other jobs where they will be provided with the law enforcement officer retirement status, the 20-year retirement that they look around and see so many others having, and while they have the same responsibilities, they are not given that. They are given the title of law enforcement officer in death if they are killed in the line of duty, and they are given—they are called law enforcement officers all the time. You will hear the Department refer to them as law enforcement officers, but they do not give them the designation under the law.

So they would also tell you that the job they were hired to do is not the job they are being asked to do today. They are being—the Department has decided to cross-train them on Customs and Immigration and agriculture work and expecting them to be an expert in all. And each of them came into the Department with an interest in and an application for a certain kind of work, and it is a large body of law that each of those encompasses, so they consider themselves, rightly so, experts in their fields, and they see that expertise being diluted.

And the training they are being given to do these other responsibilities is not proper training. They are given a 2-week course, in

some cases they are given a CD to go and watch on a computer, and then they are expected to be experts in immigration law. And if their body of knowledge is Customs law, it is absolutely inappropriate to expect them to be experts in everything. And they don't feel like they are being given the tools and the resources to do the job that they know the country is depending on them to do. They are very frustrated.

Mr. ROGERS. Tell me what category these Border Patrol folks you are saying don't qualify for the pension fall into.

Ms. KELLEY. Actually, Border Patrol employees do, the agents do. These are called Customs and Border Protection officers, CBPOs. They were formerly Customs inspectors, immigration inspectors. Now they are called CBPOs—

Mr. ROGERS. How many of them are there?

Ms. KELLEY. There are over 14,000 of them. And like I said, the Department refers to them as law enforcement officers all the time very conveniently, but they do nothing to give them the status that they deserve.

Mr. ROGERS. And what role do they fill. What functions do you generally see them pursuing?

Ms. KELLEY. They do everything at every port of entry in the country, whether it is a seaport, airport or a land border crossing. They do primarily inspections; they do secondary inspections. They are all armed. They apprehend those who are trying to run the borders. They catch the drug smugglers, they catch the drugs and the individuals, whether it is human smuggling down on the Southwest border. I mean, they are involved in all of those law enforcement activities.

Mr. ROGERS. And there are 14,000 of them?

Ms. KELLEY. Over 14,000. That is just the front line, then you have the supervisors; but, yes, over 14,000.

Mr. ROGERS. Thank you.

The Ranking Member is recognized for any questions he may have.

Mr. MEEK. Thank you very much, Ms. Kelley. What I will do is—President Kelley, I am sorry, this is a building where people believe in titles.

But let me just run along the lines of what the Chairman was asking because I think it is very, very important that people understand the difference. I have had the taste of both worlds, being a member of the Florida Highway Patrol, being on the road for 3 years, being a member of the PBA at that time, hearing "gripe sessions" out on the road when two or three people get together to talk about what is wrong. I am glad that you brought about some clarity as it relates to what one may say chatter out there, to say it is a legitimate concern geographically and across the board. And this is the kind of stuff that is hard to really—once the study comes out, I mean, once we get the professor in—and I to want ask him some questions—once we start going along those lines, 9 times out of 10 it is too late.

Now we are looking to expand Custom-border protection as it relates to more officers. And we have individuals that are carrying out law enforcement functions—I am getting ready to ask you a

loaded question because we are about solutions here, hopefully, at this committee.

In State government you have a number of wildlife officers, you name it, across the board, outside of what you may call State troopers, uniformed State police or what have you. In the Federal Government you have different tiers of law enforcement agencies. One may say that the threat level—and it is usually a collective bargaining unit—I mean, just everyone that falls into that category moves up to the next ladder. Some folks may argue that—and I don't want to call an agency's name out, but one agency's level may not be as high as the next.

And I think it is important as we start looking at this debate of making sure not only if a person is carrying out law enforcement functions—badge, gun, handcuffs, immigration, pocket field guide of statutes to enforce and policies, writing reports, going to court, testifying, quote/unquote, law enforcement professional, but not seen as a law enforcement officer because you have folks that will leave, A, for more money; B, for the respect that they are a law enforcement officer; and retirement.

So we are asking people to commit—because, you know, as we speak right now, 11,000 National Guard troops are being trained to go just to the Southwest border, but that is another editorial for a different day.

I want to ask you, is there a discussion within groups that are—and, Mr. President, you can answer this, too, if you care to do so—is there a discussion amongst those that want to move it up? I am not familiar—I am familiar with it, but I am not familiar with the debate within the 150 law enforcement agencies to bring them up to the level of parity. Is there a debate there? Because usually one agency may carry another agency's will to move up and get the status.

Ms. KELLEY. As far as I know, there has not been that debate; no one has opposed or said that these CBPOs do not deserve the law enforcement officer status. I mean, they are—from one day to the next, you see incidents of shootings, and in the last 2 months there have been 3 shootings that CBPOs were involved in at the northern border in Blaine, Washington—

Mr. MEEK. Let me just say, when you say CBPOs, just for the folks who don't understand what that means.

Ms. KELLEY. The Customs and Border Patrol officers. And these are different than the Border Patrol agents. The CBP officers work at the ports of entry, land border crossings, seaports, airports, the authorized ports of entry. The Border Patrol agents cover the area between the ports of entry.

Mr. MEEK. I am sorry if I misstated. I understand that part; I am sorry if I misstated that. I am just saying as it relates to increasing those numbers there, when we talk about the parity, is it just for those officers only?

Ms. KELLEY. Well, at this point the CBPOs are the only ones who do not have it. The Border Patrol agents have law enforcement status, the ICE agents have law enforcement status. So within the Department of Homeland Security, the only employees who are armed and conducting law enforcement officer duties every day who do not have that status are the CBP officers. And that is why they are

the focus of the legislation that I mentioned in my testimony and that everybody is working towards.

I mean, I have not heard of any dispute that they don't serve it. What I have heard, and what the administration has proposed, is an interest in looking at a different kind of law enforcement officer designation that would change the definition that exists today.

Mr. MEEK. Okay. I guess what I am trying to get down to—because I am doing what the Chairman does, I am asking my own question versus the questions they have written down to ask. Who are they comparing themselves to?

Ms. KELLEY. They are comparing themselves to local and State police officers that they work with every day conducting their duties, with the Border Patrol agents, with the ICE agents—

Mr. MEEK. Okay. Now, that is where I am going. As it relates to the parity issue, I know that out there, like we have this debate in Armed Services, an enlisted marine versus a reservist or a National Guard Army person versus an enlisted person, they are getting two sets—two different sets of benefits, but if you ask the enlisted person should the National Guard person, soldier, get what they—get the same, they would say yes; but when you get up here as it relates to policymaking, there is a price tag on that. And so I am just—so they are comparing themselves. The officers are comparing themselves to border protection—Border Patrol protection officers saying that we do the same—pretty much the same job that they are doing; am I correct?

Ms. KELLEY. Yes.

Mr. MEEK. Okay. So that is what I am trying to get to. I am sorry if I was going around, singing without my song sheet, but I want to make sure that that is clear and we have clarity there. Because the missions are very similar; am I correct?

Ms. KELLEY. Yes, they are.

Mr. MEEK. Okay. Now, one other question I want to ask here—and, Professor, if I can, you mentioned something on procurement, and I think it is very important, and I know that we have—Mr. Chairman, I want to ask for a little latitude here because I want to get this question out before Ms. Kelley leaves because I may—President Kelley—because I may have another question there.

In your testimony you indicated that outside studies have shown an average procurement spending per employee ratio from 5.3 million to 6.3 million to 8.8 million in other Federal agencies with similar profiles to DHS; but you also stated DHS average spending per procurement employee is at 12 million. And I guess I want to ask the question, why does this matter? Because—if you can tell me in a short blast, that would be good, because we have to set forth all of this for the record.

And I think it goes hand in hand with—what I am trying to do, Madam President and Mr. President, what I am trying to do is build the record because we have wasteful spending that is going on in the Department, and folks better yet are saying that we can't upgrade these officers to build morale and stop attrition. If we were to put a stop to the wasteful spending, then maybe, just maybe, there would be dollars available to be able to say this is a reward as we start to lift our whole Department up, especially our frontline people.

Mr. TIEFER. You have the numbers exactly right. And the numbers were developed by the inspector general of DHS, who I guess is used to looking at failed procurements and was doing an overall study to show why is it occurring on a general basis rather than procurement by procurement.

The comparison, the fact that DHS—each DHS procurement officer has many more millions of dollars in procurement that he is both doing the initial awarding of the contracts out, and later on doing the supervising, the oversight of the contract as it is performed, much more than comparable contracting officers, say, for the armed services. That affects both those stages. At the awarding stage it means that the contracting officer is under great pressure to do things the quick and easy way, which is less competitive, to use one of these methods of which the simplest is when you just go to an existing interagency contract, and instead of saying, I will put this out for bids and I will get some competition, you just say, let me see, does the Interior Department buy this kind of thing, does some other department buy this kind of thing? I will jump on their governmentwide contract, and I will just take it under their contract, missing out on the chance to compete. So that is one thing is there is—there is it means much less competition.

And then at the stage of the actual performance of the contract—and this is true at contracts this committee has looked at like eMerge, when they are being performed, the contractor gets away with not meeting the milestones, not meeting the schedule, having cost overruns, and maybe not even performing in the end, providing the deliverable to a contract that it was supposed to, because the contracting officer has too many things to do, too many balls in the air, too many of these to watch over, and can't give it the attention that would bring it in as expected.

You saw this in eMerge2. I gave an example of ACE, this $3.3 billion crucial contract by which Customs is going to try to keep track at the borders of incoming trade. There have been complaints about this all along: It keeps missing its schedule, it keeps coming in at high charges. That is because the contracting officers are not able to sit on top of it, they don't have enough of them.

Mr. MEEK. Thank you, Professor Tiefer.

I guess we get one more round.

I really want to go down the road of the whole contracting and how does that kick into the lack of morale there at the Department, because I know that it must be difficult. You heard me say in the first panel that it is hard to say that, you know, I am looking—I would love to work for you, private sector or public sector, and coming from the Department of Homeland Security, because the black eye, the big black eye, is in the area of procurement, and it has to have something—beating down employees as they go to serve; they want to come out with a good name, they want to be in with the good name.

And I am thinking of some of the cost savings if we were to deal with the issue of making sure—we are going to have a procurement chief hopefully before this committee soon. That is going to be one of my questions based on your testimony, which I had an opportunity to read prior to the hearing, to hopefully be used along with the inspector general's report, that can talk about how we can save

money and be more efficient and not have some at the next hearing or the hearing that we are going to have on this whole limo issue.

The bottom line is if we had the people that really would take the time to do the job, maybe, just maybe, we will be able to save money. Maybe we will be able to show a cost savings where we will be able to upgrade our officers to law enforcement status. So I will leave it at that.

And, Mr. Chairman, I just want to prepare Madam President, Mr. President, my next question is going to be about the merger of the department of ICE and department of Customs and Border Protection. I just want to ask you what you may be hearing out there amongst the rank and file, because I know there is chatter out there on it.

With that I yield back.

Mr. ROGERS. I thank the gentleman.

The Chair now recognizes the gentlelady from Texas Ms. Jackson-Lee for any questions she may have.

Ms. JACKSON-LEE. Thank you very much.

If I have not said it before, let me thank the Chairman and the Ranking Member. I frankly believe that this subcommittee is probably one of the more pointed cornerstones of the success or failure of this Department. The oversight, so that we can construct a functional securing band around America, clearly will come about when we eliminate the warps, the confusion, the disjointedness and the frustration.

Let me thank all of the witnesses on this panel, particularly because they do represent a different perspective, and one that deals with the base employees, both Mr. John Gage and Ms. Colleen Kelley, and Professor Tiefer for your focus.

I do want to spend my time engaging you, Mr. Cage—and thank you for your testimony. In fact, allow me to put on these glasses, that symbolize wisdom and not age, to be able to read, if you will, the points that you made and I think are extremely important.

Most frontline CBP personnel do not believe they have been given the tools to fight terrorism. Most believe the Department of Homeland Security could be doing more to protect the country. Most have serious concerns about the DHS strategies related to their jobs, and the majority feel that the One Face at the Border initiative has had a negative impact, and that will go to the question I think that the Ranking Member will ask. Most believe that the changes in the personnel regulations will make it harder to accomplish their mission, and three out of five respondents say that morale is low among their coworkers.

I think one of the points that I want to emphasize is there seems there is no tension between Ms. Kelley and who she is representing and some of the issues that she has concern with and what you have, and I think we need to make that point. And I think that the various entities, the personnel, they want to work together, they want to make things work. And I support the Filner legislation; and, Mr. Gage, you can tell me whether you oppose it, but I support it. I think that those who I have seen at the front lines, who I have watched as the inspectors have worked as I have been at the various entry ports around the nation, certainly there is that kind of merit.

But I want to go through, Mr. Gage, and I want this committee—because I would like in particular—and I thank you for studying the rapid border protection legislation. And I would commend to the Chairman and the Ranking Member, I really would like the pieces that are addressing the concerns that Mr. Gage has raised and also this whole issue of second-class citizenship for Homeland Security Department professionals and staff really to be addressed in this committee. I would like a hearing, because we made this a partisan issue when we were confronting this in the last election about collective bargaining for Homeland Security. It became a cause for the defeat and the victory of some various candidates.

But what I want to do is what we have said. We work in a bipartisan manner here. If we believe this is a constructive approach to help rebuild morale, if we believe that these personnel, as others, have not taken advantage—right now the controllers, the air traffic controllers, have said blatantly, we are not going to strike. We are engaged in negotiations; we know that we cannot. And I believe our Federal employees are not going to engage in anything that would undermine the security of this Nation, but we have undermined them.

Mr. Gage, tell me specifically as we talk to—I am looking at section 307. I think that specifically restores in this particular legislation those rights to the employees, I think, that you are mentioning. But I—as you are talking about that, I want to go to your testimony. I want you to talk more directly about the pay system and why that is confusing to you. I want you to talk about the difficulty of employees not having appeal rights, or the fact that they don't have any collective bargaining provisions, and then the fact that the Department of Homeland Security has actually violated court law, they have actually gone beyond a decision by a Federal court, as I understand it. Help us understand how this committee can be effective in at least fixing some of the terrible morale problems in the individuals that we are asking to be on the front line of border security and immigration reform in America.

Mr. GAGE. That is a wonderful question. First of all, I think on the litigation, we said that what Homeland Security was doing in the area of labor relations and employee rights and civil service protections was wrong, and we have proven it illegal, and I think that will stand up on appeal, the way I read the judge's decision.

But if you really get down to it, Congresswoman, about what these people need on the front line, the TSA employees I hadn't mentioned. Now, the agency—the Department has the right that you all gave them to determine what rights TSA employees would have on the job, and they have determined that they will have no rights. And when you talk to these folks about how their shifts are changed from day to day, and there is no way that they can have a normal life; that their leave is restricted, for 6-month periods they are told that they can take no leave; now, collective bargaining clearly would address that without harming in any way the mission in TSA.

But I think the frustration comes by when people say, for instance, bilingual pay, they ought to have it, they don't have it, why don't we have it? And the Department will say absolutely nothing and force the issue into litigation, when senior inspectors see their

overtime just taken away. And these are law enforcement provisions that you all have passed, that an agency is to use these as a tool for employees who have these tours of duties that run over normal tools. And the Department doesn't try to solve it, they simply wipe it out.

And these officers are not children. I think you go a long way when you sit down and you talk to them and you have reasons, they all want to do a good job, they all really are trying to love their jobs. There is a lack of communication; it is my way or the highway. They post something on the bulletin board, that is it. People talk, can't understand it, and it just builds, it festers.

But I think what you all could really do is correct these pay problems, FLAP, AUO, overtime, the grades right now in that Department. As well as your bill on the 6(c); this is something that I think cures a lot of problems, but you can't even get the Department to address it. They simply say no, and the employees say, well, you are asking me to do all these extra things, and you are nickel and diming me on these paid benefits that I should have.

So I think they understand a certain amount of stupidity in some of the Department's policies, but they don't understand how they are asked to do so much. They are cooperating, they are doing their part, and the Department is fighting against them on these pay benefits that they absolutely deserve.

Ms. JACKSON-LEE. Mr. Chairman, if I could follow on this last line of thinking and share with you a comparable situation.

Across America local police departments and fire departments have collective bargaining. In the city of Houston we meet and confer, and other aspects, to have our public employees the opportunity for discussion give and take. I can't recall a shutdown in my city—I know there have been a number of other incidences, but by and large you will find that everyday public employees on the local level get up, put on their uniform and do their job. And I can't imagine that we would not have the same semblance of situation, given the opportunity to review this. I think a hearing would be appropriate.

And I would just add that in H.R. 4044, sections also include establishment of specialized inspector occupations, the language training, the language awards, professional development that goes on that gives the incentive for employees, and as well, I think, fixing this merit system that I hope maybe in our next line of questioning you will get.

But the idea, if you could just finish, that what we think enhances performance in this stressful responsibility of homeland security, is it your view that what the Department may feel enhances performance actually turns down or dumbs down excellent performance, including what you said about TSA? Because I would prefer the TSA staffing to be trained at such an acute level that they don't have to be examining people with metal hips or stripping down elderly people in wheelchairs, though we want them to be secure; but they have the finite training that they need that they can actually make sure they get the guns and the knives and whatever else that they are supposed to be trying to get, the bombs, as opposed to what they are being made to do now. Can you just finish on that point?

I thank the Chairman.

Mr. GAGE. I think you are hitting on something there. I know when I was out in one place and the officers got together and they said, they publish these shift schedules, they don't ask us about anything. Someone might have a graduation, be able to get a co worker who could take that shift for him. And that really is a part of collective bargaining, an employee voice. And they just rule all that out. It is, this is your assignment, that is it. And it really destroys the teamwork in law enforcement.

And that is the fear that I have, that they are taking all the good things that we have developed about these officers working together, really looking out for each other, doing the job, and they are killing the good things and replacing it with, you know, a management style that is coercive and intimidation. And I scratch my head why? It would certainly be a lot easier and a lot more profitable and, I think, efficient to go the other way and recognize the employees' voices and how that could be a very positive thing on the work site. By this Department is very disjointed, and just basic things like that seem to be lost in the shuffle, and I think it is really hurting them.

And all these officers, most of them, have criminal justice degrees. These are not inexperienced people that you have to treat like they are children and that they are stealing something. And that is what a lot of the officers feel; they feel like they are the enemy.

Ms. JACKSON-LEE. I thank the Chairman and Ranking Member.

Mr. ROGERS. I thank you.

I would like to, again, remind Ms. Kelley, we hope you can stay, but if you have got a flight, we will understand if you have to part company with us. But I hope can you stay.

We would like to pick up with Mr. Gage and Professor Tiefer about the same subject matter I was talking about with Ms. Kelley. That is, what do you suggest—she talked about staffing concerns that affect retention. What do you suggest are some areas where we can make improvements that would deal with this morale? I know in your opening statement you made some pretty good observations, but generically with that, and retention in general.

I was surprised to hear—I cannot remember which one of you said that you didn't really think it is as big a problem as recruitment. Border Patrol folks are telling us the opposite. They are trying to get folks in these training programs, they are spending huge sums of money to try to get applicants, and they are having trouble. But in any event, tell me, Mr. Gage, what do you think?

Mr. GAGE. I think the first thing that has to be done is these inconsistencies in the Department have to be cured right away. Some of these pay differentials where some people get it, some people don't, completely arbitrary, these officers don't understand that. The bilingual pay, getting the overtime straightened out, getting the grades really looked at.

Mr. ROGERS. I am sorry to interrupt you, but you brought up something I wanted to ask earlier when I heard Ms. Kelley talking. Talk about the pay—the pay that we are offering Border Patrol agents and Customs and Border Protection Officers. How does it

compare with what they see in other areas of law enforcement, and does it have an effect at all on their retention?

Mr. GAGE. I think it has a huge effect. The ones who do get hired and trained by the Department are now looking to move quickly with that training into—

Mr. ROGERS. Where could they go?

Mr. GAGE. Look at San Diego, I think they start off their police force there at something like $65,000 and our agents and our CBP officers can be started off at a grade 5. Now there is about a $25,000 change right there, and it is just simply not competitive. Now the Department clearly can start these people. Now, the Department can clearly start their people at it a career ladder, 5, 7, 9, 11, the grades that currently exist. They can hire at a higher rate. Why they don't, I don't know.

Mr. ROGERS. Let me ask, and again, excuse my ignorance here, don't they get additional pay?

Mr. GAGE. Locality pay.

Mr. ROGERS. A $45,000 base salary then what would they get on top of that? Locality and scheduling?

Mr. GAGE. It is an extra percentage they get on their structural pay raise that you all give them at the end of the year. If you are in a high rate, high rent district like San Diego or Ft. Lauderdale, you may get 2, 3, 4 percent more on your raise. Congressman, it doesn't even touch the real estate. It is just completely ineffectual.

There was a woman out there who runs the Federal managers association who did a study of this thing and interviewed people, officers who were living in their cars, family were 200 miles away and her solution is a housing allowance similar to the military. Now that may sound a little way out there, but when you look at this problem, those people have to be agent those essential ports.

Now the other stupid thing that the Department just did, and these affect our people up on the northern border. Some of them live in Canada. They come out and say all right, by July 1st, you have to live in the United States. And I talked to one woman, she said I have to quit. I am an 18-year employee, I am a veteran of the military, I have nothing but outstanding appraisals. Now they are saying because I live in Canada, and I just bought a new house, I can't work on my job. And she said what is the nexus, what is the connection with working in Canada or living in Canada a couple miles from the border and working there, and the agency just puts out this blast that you can't do it any more with no grandfathering in, no consideration for the people who are really affected and no relocation expenses, nothing.

Now that woman is going to get the agency, and there they just drove off another valuable employee.

Mr. ROGERS. I would like to hear from Mr. Tiefer as well. What would you suggest we could do to combat this morale problem, and retention in particular?

Mr. TIEFER. There is supposed to be, there has, for years, been a pay comparability statutory structure that the Federal Government has committed to doing surveys and getting the page in a locality in a specialty paid under the general schedule, the GS comparable to the local pay. That is why there as locality pay system.

What you are, in effect, trying to do in this room here is make up for what hasn't been done by the systematic process.

I would say that the big problem for the Department of Homeland Security is that its statutory commitment to MAX HR takes it off of the comparability process. The contractor who is doing MAX HR is trying to do, if I understand what he is trying to do, Northrop Grumman, what it is trying to do, it is trying to reinvent a different form of locality pay comparability that will make the pay bands comparable to what is paid locally. That is a disaster.

If the government simply went back to what it was doing, which was trying to achieve parity, that would go a long way.

Mr. ROGERS. Thank you. My time is up. I now yield to the Ranking Member for any additional questions he may have.

Mr. MEEK. You know, President Gage, I have the question on the merger of Custom Border Protection and ICE. I just want to ask you, because we are talking about morale, because we have had—did we have two hearings or one? We had a hearing on it and I think we have had a couple of hearings on this issue of Custom Border Protection versus ICE. We just had one last week. Three hearings, thank you for correcting me. We have heard testimony that there is a 50–50 assessment out there on making it happen, and mainly it has been surrounded around some of the things that you and Madam President Kelley mentioned earlier, individuals having a very low morale and also as relates to investigations, ICE not willing to take some Custom Border Protection investigations. They go outside the Department of Homeland Security for follow-up on cases.

What are you hearing? There has to be some chatter out there amongst the rank and file on this.

Mr. GAGE. I think that what I am hearing is that from the rank and file they definitely all feel there has to be more communications between CBP and ICE, and they feel that there isn't. They look at it really as a management problem.

I think our ICE personnel are a little hesitant about going into CBP simply because they are afraid they are going to lose their law enforcement status and some of the benefits that they have.

But from what I have been hearing is that they really see—and you get anecdotal stuff on the snafus between but really a basic lack of communication between the two agencies and the Department. Now whether merging one into the other corrects that, I don't know. I don't see why—first of all, they ought to communicate a hell of a lot better, and I think that would go a long way to really answering the logical and operational problem that they are experiencing.

Mr. MEEK. There is an attempt. There are some memorandum of understanding. They have a similar working group as you heard in the panel before you as relates to MAX HR. They call it their human capital council. They have something similar within the Department. It seems to be a breathing philosophy in the Department of having top level managers sitting there kind of coming up with an interpretation of what is best for the rank and file.

I wanted to ask you, do you think that there is a place for rank and file individuals or some representative on this human capital council to give the kind of input that must be needed at that level?

Mr. GAGE. I think it is crucial. There has been really a lack of communications between this Department and the unions. It has just been shut off. And just time and time again, you can see decisions that are made that really don't take in any type of voice of the employee. And I would say that it is—I mean, in trying to deal with them like this whole MAX HR, Colleen and I both had some very good suggestions on how labor management could be done better, how the pay system could be done better, and they were just summarily kicked aside.

We are following some HR theory approach to this thing, which really doesn't get down on the ground in practical application. I really have a problem with it. I think they are really heading for disaster by not taking employees into the design and implementation of whatever they do.

Mr. MEEK. So, President Gage, will it be an accurate statement to say that if that offer was made, and obviously you are saying that both of you have offered your expertise, if you are saying yeah, we are fighting on this thing but meanwhile, while you are carrying out your mission, here is a better way to do it that will be useful and that you are willing to do that, and lawyers won't keep you from doing that on behalf of the employees. I want to make sure that is there.

Mr. GAGE. I feel frustrated that we aren't given that opportunity.

Mr. MEEK. What the Department individuals came before us and said, our whole thing is to make sure communications work as it relates to the implementation of our MAX HR initiative, and I think that we need to make sure that everything is on the table. If we don't have to legislate, fine, in my opinion.

Professor, I want to go back quickly, and I know you have been sitting there thinking about what I kind of put out there in the first round, on this cost savings of the whole procurement issue if we were to have accountability. Do you have any recommendations, reading the different studies and reports, on what will be a good ratio for the Department of Homeland Security based on its history of not being able to keep up with these contracts, ratio that we pulled out of the Inspector General's report, similar agencies that have better staffing than Homeland Security?

Mr. TIEFER. I think it should be looking for what the armed services do. I want to add another comment about this, that is that in many ways, in many respects, Homeland Security Department buys things like the armed services. It buys information technology systems which, in some sense, are private sector products, but in other senses, have to be tailor made for the security environment and security needs. It is buying the things the armed services needs. In many cases, it buys them from the same contractors who sell it to the armed services. It needs something like the same level of procurement officers.

I wanted to make the comment that there is something in the bill that was marked up here, that I think is very good, which is that you are looking to create a training—Homeland Security's Acquisition University. I saw that and I saw how very much that picked up on the advantages that in the armed services, you have for the Defense Acquisition University, and I think that would be a real step toward having topnotch procurement in the Department

because that is why we have a Defense Acquisition University, you have trained people and that is how you move them up the scale. They get better because you train them and so they are ready to take on the bigger assignments.

Mr. MEEK. Thank you both, and I am sorry President Kelley had to leave. She waved to us as she was leaving. I hope she makes her flight.

I want to thank all of you for coming before the committee. I know this will be my last time saying anything, the chairman will get to close out, and of course, Ms. Jackson-Lee has something to say. We are going to continue to work on this issue, it is a work in progress, but whenever we can come to these common ground and these hearings can bring some sort of new revelation out of saying we are willing, without legislation, to sit at the table and work through these issues as relates to the human capital council, even though our members may have issues with it and with MAX HR, we do know that it will be in existence for some time, and if we can head off additional frustration, fine.

If that wouldn't be used against you as relates to litigation and would hurt your ability to be able to hold on to the decision that has already been made, then maybe that needs to be put on the table too.

I want to let you know as this member, I will encourage the first panel to engage those that are on the front line, and I did propose that as an idea. Hopefully, I know someone from the Department is listening, but hopefully, they will take some steps where they can report back to this committee and say based on the hearing, these are the things we have I implemented to even make our program better while we still have it. Thank you so very much. Appreciate your service to the country.

Mr. ROGERS. I thank the gentleman.

The gentlelady from Texas is recognized for any further questions she may have.

Ms. JACKSON-LEE. Thank you very much. I hope as I listened to both the chairman and the ranking member, that there is someone who understands the concept of a word to the wise, because as I listened to both panels, I see permeating through the discussion the frustration of not having a seamless team that is working on really, as Americans, have described the number one priority, and that is our security.

Americans turn off their lights at night, close their doors, some of them have their own personal security alarm system, but their overall view is that I sleep in a country that is protecting me from the next terrorist or I sleep in a country that if there was a natural disaster that overtook all of my community, that I would have at least one life line, and that is the United States of America.

It frustrates me to know that there are employees that sense that they are not part of the team, there are employees like Transportation Security Administration employees that don't have whistle blower protections. That is frustrating. And don't have basic accommodations so that a team is built.

I am disturbed, Professor, about this MAX HR. Sounds to me like a new video game, and one that you might lose. I am trying to understand, and this may be off the mark, but I am still under-

standing whenever you start getting into layers of confusion and naming names and putting categories, I am seeing something with four bands, I don't know if this was your terminology, Mr. Gage, or what, but entry and development, full performance, senior expert, or supervisory. I don't know if we are in the Olympics or whether this is some form of incarceration.

So help me understand, Professor, the MAX HR and then build into it what is so important is the team building. I would want to join with Chairman Rogers and Ranking Member Meek to, if you will, really go at this, because I think you are right, your expertise with a State system and on the front lines as an officer and the various expertise that we bring as a member of the Houston City Council, though a small microcosm of what we do here, we were constantly engaged in public employee issues and law enforcement issues.

But, Professor, this MAX HR, I am tempted to try to go at it and to bring some reform to it. What is your view of that?

Mr. TIEFER. I understand the name has many overtones, some of them not so positive. The idea is to eliminate the GS system. No longer will people be known, if you ask them, are you a GS–6 or GS–8, instead you will have 9 or so occupational clusters; technical people, that is one occupation; law enforcement personnel, that is another, and then within the pay scale for that occupation, there will be just four levels sort of depending on whether they are entry level or higher level, which is much less structured than the existing GS system.

So it is basically eliminating the structure and then saying we will have performance criteria and the supervisors will give people the amount of pay that they rate on their performance. It is not a bonus system where they are sort of assured of a level pay and good performance gets you a bonus, it is all their pay is going to—

Ms. JACKSON-LEE. Up and down, sliding back and forth. So it is a great frustration. Again, what you are pointing out is it seems to have no structure and certainly it seems to have people more focused on their daily needs than doing their job. They have got to constantly be worrying about am I keeping up with the supervisors view of my getting a living versus let me see what innovative view, or how I can work with my team.

Let me throw this out so I can have it on the table. I want to join in the theory that you have heard about a lot of expended dollars on really faulty and just abuse of contractual situations. I only say that because money spent on contracts that don't work certainly impact resources that the Homeland Security Department has in general. So I want this committee as well to attack, if you will, what I thought was enormous abuse in Hurricane Katrina, and that is huge outsourcing of work and no results.

I talked to law enforcement officers who were asked to come in, and I guess they should have been under the Homeland Security umbrella, DEA, and I am sort of off, but I want you to hear this, DEA, U.S. Marshals, et cetera, and they sat idly by because they had no one to allow them to come under the umbrella and say we are all working because we have got this tragedy. They were kept in the box.

I only use that as an example to say it looks like you are keeping employees under this system in the box. You have people hesitant to work together, and in your words, Mr. Gage, you say that this is only possible with a system that promotes teamwork, but any new pay and classification system should support, not undermine the mission of the Department of Homeland Security. Explain that.

Mr. GAGE. There is a saying out there that certainly with law enforcement, and as people have worked for supervisors, these are not rookies to the Federal sector, and there is an old thing out there that some supervisors will rate you outstanding if you can drink water and other supervisors won't rate you outstanding if you can walk on water. People see that as the type of system that is coming down that is going to govern not just a bonus, their base pay, and it is a formula for abuse and cronyism and bringing people into the Government who might be friends, they can bring these people in at whatever rate they want.

So I guess you might say that I am pretty down on this type of system, especially with law enforcement. It has never been proven to work in any law enforcement setting and I think this is a formula for disaster that is going to ruin all the good things we have developed among our people and their teamwork and looking out for each other.

Ms. JACKSON-LEE. If I may, you just hit upon a point. The Federal Government has always attempted to be above cronyism. In fact, for many of us in the African American community, Hispanic community and other diverse communities, the Federal Government was the first resort or the last resort because of its alleged non-bias in hiring individuals. You now throw this to the wind for women, for people from regional differences. That bothers me. And I don't think MAX HR has convinced me or the way it is structured that we won't fall back into and be victimized in a department that we don't need any of that.

My last point is, if you could, both of you, I see that there is a meet and confer. I try to suggest that you unions certainly were sitting around the table when they were in the design process, and you might comment to me whether there was a contractor that did that. Apparently they messed that up.

In any event, are you saying that the meet and confer is working or what are you saying about that, and what are you saying about the design process or design team or whatever this was called that got you to where you are today.

Mr. GAGE. There is no question this was done before any meet and confer, designed process. There was a canned personnel system that they had ready. They were going to put it in come hell or high water, and when you sit down and try to offer suggestions on how this would work better on the ground, they were just run over. I don't think Colleen or I had one suggestion that was adopted by the design team or certainly not by the contractors in implementing this.

So I think at DOD, as well as Homeland Security, they went through some motions and sat down, but there was really not true dialog. These were people who said we are going to follow this formula we have and that is it.

I wanted to bring one point up that is really a morale issue and that is the shortcomings in security. End of shifts, San Usedro and another one in Houston, the officers will be told wave them through. And you will see a line of people coming through and suddenly the officer just stopped doing his check, wave people through. Why? To avoid overtime pay.

In Houston ships come in at the end of a shift, and we have this documented, and instead of a Customs guy and an immigration guy being the first ones up that gangplank, if it is the end of the shift, they say get them tomorrow morning and allow the ship to go through its unloading operations over the night.

What kind of security is this is what our officers are asking us. The horse is completely out of the barn in these type of situations on the land borders waving them through and in ships letting them unload before they are inspected by customs and immigration. And I think that has to stop. And it is about one reason, overtime budget is it.

Ms. JACKSON-LEE. Mr. Chairman, if I may just finish my sentence by simply saying again, I applaud this committee and the leadership that both of you have given. These folks here are not the enemy. And I think though you are particularly well coifed, I know your hair just stood on your head right now. And that is in my city.

And I know there are people on the ground that mean well, meaning my port officials and a variety of other people who are counting on the job being done. One of the largest ports in the nation. We have just been told that for overtime reasons that Americans who are turning their lights out at night have reason to fear.

I think that you have just added maybe hopefully another agenda item for us for a hearing and as well, let me extend an invitation to my colleagues to visit the Houston Port and some other sites that are facing these kinds of obstacles because when your port management relies upon your Federal authorities, they are not out there picking at them, they are not out there at the time of the opportunity for ships to be unloaded or to be docked. They are relying upon who we have vested this responsibility.

I would simply say you are not the enemy, Ms. Kelley is not the enemy, and I would hope that we would have an opportunity in this committee and the full committee to do the job that the American people have asked us to do. And I yield back. I thank the chairman and the ranking member very much.

Mr. ROGERS. I thank the gentlelady for her questions. I thank the panelists for being here. I am very proud. Our Committee has done a good job on staying focused on what we called this hearing about and that is the human capital concerns that exist in DHS.

Having said that, I want to backslide slightly with the last question that I ask before we close the hearing. In hearing Professor Tiefer talk about his background, you mentioned you have a specialty in procurement law. I can't let you get away without asking your thoughts about the Shirlington Limousine contract and why—I hope you know the facts, if you don't, that is fine, then just pass—but why do you think that contract wasn't rebid when it was determined that three of the four HUBZone contractors did not qualify and Shirlington was the only supposedly qualified con-

tractor left standing? Is that a standard procurement practice? Tell me your thought.

Mr. TIEFER. Mr. Chairman, you have a nose for things that don't seem exactly right. The fact that that contract was let to a particular contractor while the other three potential competitors were brushed away looks not just negligent, I think the agency's position, although it wouldn't say this, is maybe we were negligent. It looks more than negligent, it looks suspicious.

I can tease a few of the clues out of here. The contracting agency is saying look, we checked the responsibility of the contractor as much as we were supposed to. We looked on the list of exclusive bidders and we looked up their references. This is a very minimal job, less than a minimal job. It is someone sort of trying to sort of blinker their eyes.

The fact that this contractor had had a prior contract terminated is something that you would think the contracting officer would surface. They don't have to be on the list of those who are never to be allowed any contracts in the Department, which is the excluded list, as soon as you surface that, and they haven't said whether they looked for that, whether they looked and didn't find it. There is sort of a silence in DHS about whether they knew or didn't know that it had a previous contract terminated.

Once one has any reason to check, there is this—the Department is giving this notion that well, we looked at whether the contractor could do the job and that is all we look at. That is not true. Under responsibility they are supposed to look into the integrity, the business integrity of the contractor. That is the phrase in the Federal acquisition regulation. Once they knew that it had previously been terminated on doing a contract, they should have looked at the things that have now turned up about the contractor.

Again it sort of looks like their vision was blinkered, that they were trying not to look. This pattern is entirely consistent, let's put it that way, with a contributing officer who has been given the signal that this particular bidder is going to give—is favored, is going to give a kind of service that maybe other contractors wouldn't give. We want you to check the boxes on this form and award the contract to them.

Mr. ROGERS. Thank you very much.

Ms. JACKSON-LEE. Mr. Chairman, just one sentence.

Mr. ROGERS. Certainly.

Ms. JACKSON-LEE. Because he was so eloquent. The same thing happened and is still happening with Hurricane Katrina in terms of contracts being let. I would just ask if the professor would kindly assess that not in writing or maybe give us some assessment if he has either some studies, particularly in the large what we call trash collecting contracts, if he would have the opportunity to review them, Mr. Chairman, I would appreciate if that could be provided for our review.

Mr. ROGERS. Absolutely.

Ms. JACKSON-LEE. I thank the chairman and yield back.

Mr. ROGERS. The Ranking Member and I have talked about this circumstance and this is a good way to end this hearing. Our next hearing will be on this particular contract and it will be a very in-depth look at what happened. But, more importantly, as the rank-

ing member and I have been discussing, there is a broader procurement policy problem that this exemplifies that we are going to have to address, and it affects all areas of DHS. One of the most glaring examples is the one that you just referenced. We intend to learn a lot more about procurement, and particularly this contractor.

Thank you very much for being here. You have been very helpful. I would remind you that the record remains open for 10 days. If any members submit questions that they didn't get to today or because they weren't here, I would ask that you reply to those in writing so we can preserve them for the record. And with that, we are adjourned.

[Whereupon, at 1:25 p.m., the subcommittee was adjourned.]

APPENDIX

FOR THE RECORD

QUESTIONS FROM REPRESENTATIVE MIKE ROGERS OF ALABAMA FOR GREGG PRILLAMAN AND DWIGHT WILLIAMS

Question: 1. What can you identify as the single greatest personnel challenge contributing to low morale at DHS and how do you intend to address the problem going forward?

Response: One of the greatest challenges identified by the Federal Human Capital Survey (FCHS) in 2004 was the lack of employee trust in senior leadership within the Department.

While the lack of trust cannot be attributed to any single interaction or cause, it can manifest itself because of misperceptions brought about by a lack of communication, the short tenure of senior leaders and other less tangible factors. DHS created a Human Capital Survey response team which is addressing employee morale issues at a grass roots level by sponsoring employee focus groups to identify specific action plans for improving DHS morale and fostering a climate of mutual respect.

We believe one way to address low morale is to provide employees with an opportunity to learn and develop professionally. Therefore, a Chief Learning Officer position has been established to increase our focus on training and development opportunities across the Department. In addition, MAX^{HR} performance leadership training, involving a single performance system for the entire Department, has been completed by over 7,700 DHS managers to heighten their skills and awareness of employee issues and create a strong performance culture. An additional 4,300 managers are scheduled for training this year.

Also, we are striving for better internal communications, for which all SES members of the Department received specific training in August of last year that included how to improve communications and coaching skills within the workforce, and how to create a better alignment between organizational priorities and individual performance expectations. Additionally, the Secretary has recently taken steps to improve communications between senior leadership and all DHS employees through a Secretarial web cast which provided responses to employees' frequently asked questions. The Secretary plans to continue this and other efforts aimed at improving communications with our leaders and our workforce.

The Federal Human Capital Response Innovations Team (I-Team) was formed in June 2005 and charged with the responsibility of designing, implementing and evaluating the overall DHS response to the FHCS results. This team is comprised of CHCO staffers and Component representatives who take a two-tiered approach, looking at overall issues of the Department as well as specific issues within the components. It has the responsibility for analyzing survey data, designing action plans, implementing best practices, providing employee educational communications and evaluating strategic outcomes.

Question: 2. What steps has your office taken to bring the diverse cultures of DHS components together in a cohesive organization with a common sense of mission?

Response: Many steps have been taken to foster a "Team DHS" organizational climate. One important step was supporting the implementation of the Secretary's Second Stage Review which changed the Department's organizational structure. This Second Stage Review was intended to improve our capabilities to protect and safeguard the nation by integrating and coordinating areas of intelligence, policy, operations, and preparedness efforts; flattening the organization; and creating new and stronger Components.

From a human capital standpoint, we have established and expanded a multi-Component shared services center; moved from 8 different payroll providers to 1; and developed a Department-wide recruitment brand as well as broad scope work-

force analysis and recruitment plans to address gaps in several mission-critical occupations. We have also designed and robustly deployed a DHS leadership competency framework which has served as the basis for Department-wide performance leadership training and as the basis for leadership training in the Components, ensuring the development of a common set of leader competencies throughout the Department. In addition, continued implementation of the MAX^{HR} performance management program, supported by a robust, enterprise-wide ePerformance support tool, will drive the establishment of clear employee performance expectations that are aligned with organizational goals that are cascaded throughout the Department. The Chief Human Capital Office conducts bi-monthly meetings with the Component human resource directors to provide a forum for discussing diverse human resource issues. These are just a few examples of the active steps that the CHCO has undertaken recently to move toward a "Team DHS" climate.

Question: 3. It has been projected that the Federal government will experience a retirement bubble in 2007 and 2008. What has DHS done to prepare for this retirement wave and its impact on DHS' workforce?

Response: To prepare for the retirement wave, DHS is focusing on strategies in three areas: recruitment, retaining talent and fostering continuity of leadership and knowledge through learning and development.

Recruitment

The Department is conducting workforce analyses that include strategies to close hiring and competency gaps in mission critical occupations across DHS. To assist in the recruitment effort, DHS has established a corporate branding initiative resulting in recruiting materials such as portfolios, slipsheets, a recruitment video, and CD's that may be utilized throughout the Department at a variety of recruitment events. A Recruitment Taskforce has been established to leverage Component-specific recruitment activities throughout the Department. Components are making use of recruitment flexibilities such as outreach, the student loan repayment program and hiring bonuses.

Retaining Talent

DHS is fostering a results-oriented workforce through the implementation of the new pay and performance management system that links individual/team/unit performance to organizational goals and results. The DHS Chief Human Capital Office links specific Component results from the Federal Human Capital Survey to results gained from workforce analysis. Components are encouraged to actively develop internal strategies to track and improve retention for those segments of their workforce where losses are above the normal rate by making use of retention flexibilities such as retention bonuses, performance awards, telework and alternative work schedules. We will continue to develop approaches to retention based on exit interviews, grievance/complaint trend analysis, and/or focus groups.

Learning and Development

All Components must foster continuity of leadership and knowledge by applying the DHS Leadership Competency Framework and a succession planning approach to their workforce planning efforts. Learning and development opportunities must be continually funded through centralized (Departmental) and Component-sponsored activities. This ensures that the executives and those in the leadership pipeline strengthen their ability to direct and manage the work of others, evaluate and analyze results, and implement process improvement techniques. The Leadership Competency Framework provides the necessary standards to ensure learning is also aligned with organization goals. Components' will use the results gained from the workforce planning process to identify appropriate attendees for programs such as the newly established DHS-wide Senior Executive Service (SES) Candidate Development Program, Component-specific Candidate Development Programs, Department of Labor's SES Forum Series, The Graduate School, USDA's Executive Potential Program and Aspiring Leaders Program among others.

Components will continue to share resources through programs such as the tri-bureau (ICE, CIS, CBP) Supervisory Leadership Training Program; USCG's Mid-level Managers Course, Mentoring, and Executive Development Programs; and FEMA's Leadership Development Programs. It will be through these efforts that DHS? leadership cadre will better be able to effectively manage people, ensure continuity of leadership, and sustain a continuous learning environment.

Personnel Challenges at Customs and Border Protection

Question: 4. Is there concern about an exodus of pilots from CBP Air and Marine when the retirement wave hits the Department in 2007 and 2008?

Response: In preparation for the possible departure of those pilots who will be eligible for retirement in 2007 and 2008, U.S. Customs and Border Protection Air and Marine is presently assessing the number of pilots who are likely to retire immediately upon reaching eligibility. Additionally, CBP Air and Marine is developing a follow-on to the former Office of Border Patrol pilot-trainee program that will provide approximately forty-eight seasoned Border Patrol Agents, who have appropriate pilot certificates, the opportunity to become CBP Air and Marine pilots. Lastly, CBP Air and Marine has developed a strategic plan to identify its future requirements and seek appropriate funding to meet those needs.

Question: 5. In an effort to bring about pay and grade parity between Border Patrol aviators and legacy Customs pilots, Border Patrol aviators were initially given an 8% premium. **Has pay and grade parity been achieved? Are Border Patrol aviators still receiving the 8% premium?**
Response: Former Border Patrol aviators are receiving special rates as GS–1881 Air Interdiction Agents, which currently are approximately 6–7 percent above the basic salary of a similar employee at the same grade and step on the General Schedule. They are also entitled to Law Enforcement Availability Pay (LEAP). The special rates were not provided to achieve parity with legacy Customs pilots. Rather, the special rates were provided to avoid staffing problems that might have otherwise occurred when the legacy Border Patrol pilots were converted to the new Air Interdiction Agent position and lost eligibility for Fair Labor Standards Act (FLSA) overtime pay. The conversion to the new position provided parity by ensuring the pilots were in the same position with the same grade structure and with the same entitlement to availability pay. The legacy Customs pilots were already FLSA exempt; therefore a similar change in pay as a result of the conversion to the new GS–1881 Air Interdiction Agent position was not considered.

Question: 6. President Bush promised that 6,000 Border Patrol agents will be hired by 2008. **Does the Border Patrol have the capacity to train that many agents with its current recruitment methods and training structure? If not, how much will it cost and low long will it take to create a more robust recruitment and training capacity?**
Response: Funding provided in the supplemental (P.L. 109–234), together with funding proposed in the President's budget for FY 2007, will be sufficient to increase the number of Border Patrol Agents by 6,000 by the end of 2008. The supplemental provides an additional $50 million and the President's budget includes an additional $23.291 million.

Question: 7. Is it accurate that only one in 30 Border Patrol agent applicants complete training at the Border Patrol Academy?
Response: No. An average of one out of every thirty applicants makes it through the Border Patrol hiring process (including an entry examination, oral structured interview, fitness test, medical, drug screening, and background investigation) required prior to reporting to training. Only one out of every thirty-seven applicants successfully completes the entire process, from application through graduation from the Border Patrol Academy.

Question: 8. What is the reasoning behind requiring all new Border Patrol agents to spend their first five years on the southwest border? Does this policy affect retention and morale for new employees? What is being done to improve retention for Border Patrol agents?
Response: There is no policy mandating that new Border Patrol Agents serve a five-year tour on the Southwest Border. In order to meet the National Strategic Plan's goal of improving the operational effectiveness of the Border Patrol, and to facilitate the movement and transfer of agents to different locations throughout the country, CBP has sought to reach an agreement with the National Border Patrol Union on a new Voluntary Reassignment Program. A nationwide voluntary reassignment opportunity bulletin opened June 26, 2006 and will solicit applications for reassignment through July 17, 2006.

Question: 9. CBP Air and Marine currently owns and maintains DHS's only command and control facility in the United States that is capable of monitoring all airspace within the U.S. and areas leading up to its borders. However, DHS, and specifically CBP, has failed to adequately staff and fund its Air and Marine Operations Center (AMOC) facility thereby degrading its potential capabilities. The AMOC is currently staffed at approximately 60%. **Has CBP or DHS made any plans to correct this situation?**
Response: CBP defined the mission requirements and force structure for the newly formed CBP Office of Air and Marine in the Customs and Border Protection Stra-

tegic Air Plan, which was recently provided to Congress in a report. The Plan addresses the need to enhance the border monitoring missions at the AMOC by supplementing the eighty-eight personnel currently assigned. Our preliminary staffing estimate is that 200 total personnel are required to take on the additional border missions. We also estimate that the facility itself may need to be doubled in size to accommodate the personnel and equipment required to meet the various new missions, such as monitoring the DHS unmanned aircraft systems and coordinating the operations of the combined CBP Air and Marine fleet. Specific expansion and hiring plans derived from the strategic plan and Department of Homeland Security initiatives will be reflected in future budget requests for staffing the AMOC.

Question: 10. Several sections within the AMOC, including the intelligence office, are well below targeted staffing levels. **How have the shortages affected operations?**
Response: Personnel shortages have led to a reduction in operating hours in the Communications Room, a reprioritizing of areas of responsibility to be monitored by radar surveillance, and a reduction in tactical support to the field units.

Personnel Challenges in the Directorate of Science and Technology
11. It is the Committee's understanding that the Directorate of Science and Technology (S&T) has experienced high attrition rates.
a) Please describe the attrition rates for S&T during the past two years.
Response: Between May 2004 and June 2006, the S&T Directorate increased its federal employee staff by 132 individuals. The following chart details the number of federal staff that were on board between this period at the S&T Directorate.

Date	Number of Federal Staff
May 2004	108
June 2005	184
June 2006	240

Between May 2004 and June 2006 there was a net loss of 41 federal positions, but please note there was a gain throughout this period. Losses are replaced as timely as possible within the challenges of hiring federal employees. In addition, federal laboratories such as the Environmental Measurements Laboratory, Transportation Laboratory and the Plum Island Animal Disease Center became a part of the S&T Directorate; the federal employees at these laboratories are included in the June 2006 total.

b) To what does S&T attribute this loss of qualified and experienced personnel?
Response: The S&T Directorate has not experienced an above-normal attrition rate for qualified and experienced personnel during the past two years. Normal attrition is expected in a new organization and particularly in a scientific organization. A robust turnover of personnel and the injection of new scientific technical professionals helps staff maintain scientific credibility and remain abreast of new scientific technology.

During the start up of the S&T Directorate, there was difficulty in finding and hiring qualified federal employees because of the lack of an approved and flexible DHS federal hiring system. To appropriately staff its operations, the S&T Directorate arranged for qualified personnel from other agencies to be detailed to the S&T Directorate or recruited under the Intergovernmental Personnel Act Mobility Program (IPA). The S&T Directorate also established staffing contracts and actively sought to hire federal employees.

Detailees are assigned to the S&T Directorate by their parent organizations and must return when requested. IPA's serve under stipulated contract time-limits, and contractors are assigned based on the terms-of-the?contract. The wind-down of these contracts and detail assignments contributes most to perceptions of significant attrition.

c) What steps are being taken to address this issue?
Response: We are using every mechanism available to retain our best and brightest, including retention initiatives, communication, advancement opportunities, attendance at conferences, training and ensuring that our personnel know how valuable they are to DHS and the Nation.

Question: 12. S&T relies on a number of experts from the national laboratories hired under the Intergovernmental Personnel Act (IPA) and other authorities. It has come to the Committee's attention that Lawrence Livermore National Laboratory receives more than half of all S&T funds distributed to national laboratories.

a) How are the decisions directing funding to national laboratories made?
Response: As discussed in the Report to Congress (RTC) titled "Utilization of the National Laboratories" October, 2004, the assignment of work to the national laboratories is based on a variety of factors including whether the work is efficiently accomplished by the private sector and/or whether DHS has a strategic reason in investing in development of a particular capability . The S&T Directorate program requirements are reviewed annually and specific goals and budgets are formulated by S&T Integrated Product Teams (IPT). For those requirements which are determined appropriate for national laboratories and federally funded research and development centers (FFRDCs), the S&T Directorate executes a rigorous annual management cycle for program planning, execution, and review. That process includes these component parts:

- Program Planning: Each fiscal year Program Execution Plans (PEP) are developed in a program planning meeting involving relevant technical area experts from Strategic Partner National Laboratories. These meetings identify qualified performers per the requirements that DHS establishes. Within the PEP, S&T Directorate program managers assign tasks to the most qualified performers.
- Program Execution: Scopes of work are executed by individual laboratories or multi-laboratory teams, as determined in the PEP.
- Program Review: Program reviews are held annually using a team of external experts to evaluate project performance based on three primary criteria:
    - Mission and user relevance;
    - Technical competency; and
    - Management effectiveness.

Many S&T Directorate programs are of multi-year duration and the above process is used to manage program execution as well as to initiate new programs.

b) Are employees formerly employed by the national laboratories involved in funding decisions? Please assess whether the conflict of interest issues identified in the December 2005 Government Accountability Office report, entitled "DHS Needs to Improve Ethics-Related Management Controls for the Science and Technology Directorate"—or other conflicts of interest relating to DHS employees who are former employees of the national laboratories—account for the disproportionate amount of research and development funding being directed to Lawrence Livermore.
Response: As the Committee noted, the S&T Directorate relies on a number of experts from the national laboratories hired under the Intergovernmental Personnel Act (IPA) and other authorities. In addition, the S&T Directorate has employed a number of experts who were formerly employed by the national laboratories, including one former employee of the Lawrence Livermore National Laboratory.

The S&T Directorate recognizes the need for ethics-related management controls to prevent actual, or the appearance of, conflicts-of-interest as discussed by the Government Accountability Office. Consequently, management controls are in place to shield IPA and former laboratory employees from actual, or the appearance of, conflicts-of-interest in the performance of their duties. In particular, consistent with the criminal conflicts of interests provision, 18 U.S.C. § 208(a), every IPA assigned to the S&T Directorate operates under a recusal statement that they will not take any official action or become personally and substantially involved in a particulate matter in which the IPA detailee knows the ultimate outcome of which will impact his financial interests or those of his spouse, minor child, general partner or organization in which he is an officer, director, trustee, general partner, or employer. In the case of personnel employed by a national laboratory, the general prohibition extends to both the entity that operates the laboratory as well as corporate affiliates. All IPAs are instructed orally in writing that if they become aware of a matter that calls for their involvement in their official capacity that involves their sending institution, or an affiliate (or which otherwise implicates 18 U.S.C. § 208) that they are supposed to refer the matter to a person designated by name in their recusal statement. The S&T Directorate has no direct evidence that an IPA—regardless of assignment—was specifically involved in directing work to his/her sending institution or helping shape requirements that would directly flow to the benefit of his/her sending institution. If this were the case, it is something which of great concern and will not be tolerated by the current leadership. It is also noteworthy that the recently approved realignment of S&T has a significant number of checks and bal-

ances and would prevent this from occurring. If credible evidence or allegations of improper behavior is brought to the S&T leadership's attention, full and immediate investigation(s) will result.

In the case of former employees of the national laboratories, the S&T Directorate employs numerous management controls to help ensure that personnel follow the requirements in 5 CFR §2635.502 relative to former employees acting on behalf of the government in matters with a "person" with whom they have a covered relationship (the institution in which they were a former employee within one year) or in which they have a financial interest.

New IPAs are pre-screened by the S&T Directorate's designated ethics advisor and are also required to complete new employee and annual ethics training as appropriate. Also, IPA personnel are bound by disqualification agreements, which they execute prior to their arrival at the S&T Directorate, in which they are disqualified from taking any official action in matters that involve their parent institution or one of its affiliates. An IPA's supervisor is responsible for overseeing compliance with these agreements and resolving all questionable cases.

Given these procedures, the S&T Directorate believes that the amount of research and development funding being directed to Lawrence Livermore National Laboratory is based on the need for the labs' specialized capabilities and facilities, rather than the result of undue influence by IPA personnel or former employees of that laboratory.

Security Challenges

Question: 13. It is the Committee's understanding that labor unions and other groups have criticized DHS classification policies as overly broad and subjective. Is there a written policy on the classification of documents? If not, what guidelines does your office provide to DHS officials regarding classification determinations?

Response: The Department maintains substantial written policy governing classification management to include management directives, classification guides and instructions for Original Classification Authorities. Various Management Directives (MD) prescribe the policies and procedures related to classification of documents, the marking, storage, and transmission of classified documents, and the standards for identifying, reporting, and conducting inquiries and investigations into incidents involving the mishandling or compromise of classified information. All of these MDs are in accordance with the requirements of Executive Order 12958, as amended as well as 32 C.F.R. Part 2001 and 2004.

Question: 14. When an individual with a security clearance is transferred to DHS, what type of paperwork is transferred to the Department for its adjudication decision? Following the adjudication decision, what information is kept on file while the individual is employed with DHS? Please explain the process from start to finish.

Response: The principle of reciprocity has been mandatory for executive branch agencies for more than a decade. The Intelligence Reform and Terrorism Prevention Act recently re-emphasized and expanded upon this requirement. Reciprocity mandates acceptance of equivalent personnel security clearances and accesses across federal agencies. In other words, if a prospective employee holds a current clearance as a result of previous military or other government service, the Department is required to accept this clearance without additional investigation. Government—wide reciprocity procedures, to include narrowly defined exceptions are outlined in the Office on Management and Budget Memoranda (OMB) on "Reciprocal Recognition of Existing Personnel Security Clearances" dated December 12, 2005 and July 17, 2006. The reciprocity principle also governs personnel transfers to and among DHS components.

Pursuant to the Recent OMB memoranda referenced above, it is no longer necessary to transfer paper files. Instead, the appropriate Security office verifies the individual's clearance using one of several electronic databases: OPM's Clearance Verifications Systems (CVS), Department of Defense's Joint Personnel Adjudication System (JPAS), and the Intelligence Communities Scattered Castles Database. The security office at the DHS Component then creates and maintains a DHS security file consisting of the documentation confirming the clearance, and reviews the information to ensure completeness and accuracy Pursuant to reciprocity requirements, the Department does not re-adjudicate the investigation unless it is aware of new derogatory information.

Question: 15. What types of security clearances are conducted by DHS, its component entities, and contractors acting on their behalf? Are these investigations comparable to those required by the Department of Defense?

Response: Executive orders and regulations govern the process by which DHS and other executive branch agencies grant access to classified information. Accordingly, background investigation types are standard throughout the Executive Branch, including the Department of Defense.

Each DHS employee with a national security clearance has undergone a comprehensive, thorough background investigation. With the exception of the Secret Service, Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and the DHS components serviced by the Office of Security, all other components are required to use the Office of Personnel Management to conduct these various background investigations for their employees. The Secret Service uses its own employees to perform these investigations while CBP, ICE, and the Office of Security have contracted with several companies to provide this investigative service.

In accordance with Executive Order 12968, as amended, "Access to Classified Information," different clearance levels require different levels of investigation. For example, an employee requiring access to Top Secret and Sensitive Compartmented Information must undergo a Single Scope Background Investigation (SSBI). This investigation consists of various database and criminal history record checks covering the most recent 10 years of the individual's life, or since his or her 18th birthday. The SSBI also includes an interview of the subject, interviews with references and database checks on their spouse or cohabitant. For a Secret clearance, the minimum investigative requirement is a Minimum Background Investigation, which covers the most recent 5 years of the individual's life and includes various database checks, criminal history record checks, and other sources as necessary to cover specific areas of an individual's background.

Question: 16. What are some of the reasons a clearance might be denied?
Response: DHS security offices adjudicate background investigations according to the 13 government-wide adjudicative guidelines listed in 32 C.F.R. Part 147. These standards and guidelines were originally issued in 1997 and were modified in December 2004 and December 2005 respectively. The December 2005 revisions to the adjudicative guidelines, issued by the Assistant to the President for National Security Affairs, recommend that the criteria be elaborated, both in terms of the actions that could raise security concerns and the factors that could mitigate such concerns.

The government-wide adjudicative guidelines include an evaluation of factors such as: the individual's allegiance to the United States, personal conduct, involvement with drugs and alcohol, financial stability criminal conduct, security violations, and foreign influence. The adjudication process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. The adjudicative process is the careful weighing of a number of variables known as the "whole person" concept. Available, reliable information about the person is considered in reaching a determination. In evaluating the relevance of an individual's conduct, the adjudicator considers factors such as the nature, extent, and seriousness of the conduct; its frequency and recency; and the likelihood of continuation or recurrence. Each individual case is judged on its own merits. Adjudicators review the investigative file and take into account context and mitigating information before deciding whether to recommend granting or denying a security clearance. Adverse information in any one area does not necessarily result in a denial of a clearance. However, DHS will deny a clearance if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or emotionally unstable behavior. Any doubt concerning whether an individual should be granted access to classified information is resolved in favor of the national security.

Question: 17. How many security clearances has DHS sponsored for non-Federal employees? Please break this information down by security clearance level and year. How many are pending?
Response: In accordance with the National Industrial Security Program (NISP), established by Executive Order 12829 to serve as a single, integrated program for the protection of classified information released to or accessed by industry, security clearances for federal contractors are issued by the Department of Defense. DHS, however, does sponsor and grant clearances to state, local, tribal, and private-sector officials as a part of the DHS information sharing mission.

DHS Clearances Granted to Non-Federal-Employees

DESCRIPTION	Level	FY2003	FY2004	FY2005	FY2006	Grand Total
PRIVATE SECTOR	INTERIM. SECRET	0	0	14	55	69
	SECRET	4	208	216	30	458
	TOP SECRET	0	11	35	3	49
PRIVATE SECTOR Total		4	219	265	88	576
STATE AND LOCAL	INTERIM SECRET	1	18	21	70	110
	SECRET	6	39	269	60	374
	TOP SECRET	66	133	64	2	265
STATE AND LOCAL Total		73	190	354	132	749
Grand Total		77	409	619	220	1325

As of July 17, 2006 there were 166 pending state, local, tribal, and private-sector cases.

Shirlington Limousine Contract

The Committee has learned that DHS screened the car and bus drivers employed by Shirlington Limousine and Transportation, Inc., but did not screen the owner of the company before awarding the contracts.

Question: 18. From a security standpoint, would it make sense for DHS to alter this protocol in order to avoid a similar situation in the future?

Response: The contract for van and shuttle services with Shirlington Limousine and Transportation, Inc. does not involve access to classified information. DHS policy for vetting contractors on unclassified contracts is based on an assessment of the risk associated with access to personnel, facilities, and information required for satisfactory contract performance. DHS security and contracting policy requires all contractor personnel with unescorted access to be screened consistent with this assessment of the risk. This policy balances the appropriate level of security while enabling DHS to fulfill its mission. The Chief Security Officer and Chief Procurement Officer are continually exploring ways to enhance security associated with the unclassified acquisitions process.

Question: 19. Several other Federal departments and agencies, including the Department of Defense, lease their own vehicles and hire their own drivers. Has DHS reviewed the feasibility of leasing its own vehicles and hiring drivers as employees?

Response: When the Department initiated a sedan and shuttle operation in January 2003, it leased its sedans and contracted for the shuttle buses as well as drivers for both the sedans and shuttles. Limited available FTE made this the preferable option not only from a cost standpoint, but also by allowing existing FTE to be used to fill more essential mission needs. This has been periodically reviewed and continues to be the most effective practice.

The Department has recently issued a request for information (RFI) to gather industry comments and best practices on sedan/shuttle transportation services DHS-wide in the National Capitol Region. This will include a cost/benefit and efficiency analysis of contract versus Federal employee drivers.

Question: 20. Is DHS strengthening existing screening procedures by requiring background reviews of not only employees of potential contractors, but the business owners themselves, particularly in cases where the company is a sole proprietorship or limited liability corporation?

Response: Please see response above. In accordance with the National Industrial Security Program, business owners who will have access to classified information as part of their DHS contract are investigated by the Defense Security Service. However, expanding the requirement for mandatory background investigations for business owners who will not have access to classified information would affect security and procurement practices across the Federal government and therefore would require a government-wide response. Additional resources would also be required as it is expected that the number of investigations would increase significantly. The

Department is continually working with its Federal partners to identify methods for enhancing security while maintaining the efficiency and integrity of the procurement process.

Question: 21. With the understanding that different positions require different background checks, please articulate what steps are taken during the background checks of contract employees. Please discuss the specific steps that are taken during the background check for the positions of shuttle or limo driver, private security guards, and cafeteria workers.

Response: To ensure the protection of DHS facilities and information all personnel on contracts that do not require access to classified information are screened to determine their suitability to work under contract with DHS. DHS policy for vetting these contractors is based on an assessment of the risk associated with access to personnel, facilities, and information. DHS officials are responsible for making this assessment, which will determine the appropriate background investigation.

The chart below summarizes the specific steps taken for the positions of shuttle or limo driver, private security guard, and cafeteria worker.

Position	Risk Level	Investigation	Investigation Coverage
Shuttle/Limo Driver	Moderate	Minimum Background Investigation (MBI)	Security Form Review Fingerprint Check Credit Check National Agency Check Inquiries and record searches for past 5 years: —Current/past employers —Schools attended —Reference Checks —Local Law Enforcement Checks —Face-to-Face Subject Interview
Private Security Guard	Moderate	Limited Background Investigation (LBI). Added coverage because this is a gun carrying position..	Security Form Review Fingerprint Check Credit Check Inquiries and record searches for past 5 years: —Current/past employers —Schools attended —Reference Checks —Local Law Enforcement Checks Face-to-Face Subject Interview Field investigation of subject's background for previous 3 years
Cafeteria Worker	Low	National Agency Check with Inquiries (NACI)	Security Form Review Fingerprint Check Credit Check National Agency Check Inquiries and record searches for: —Current/past employers —Schools attended —Reference Checks —Local Law Enforcement Checks

Question: 22. Does DHS or any of its component agencies confirm the citizenship or immigration status of contract employees prior to granting facility access or clearance? Please identify which components do or do not confirm citizenship of contract employees.

Response: In accordance with the National Industrial Security Program, security clearances for federal contractors are issued by the Department of Defense. The Defense Security Service (DSS) guidelines indicate that only U.S. citizens are eligible for security clearances.

DHS policy is to confirm citizenship or immigration status prior to granting access to facilities. All DHS components are in compliance with this policy.

Oscar Antonio Ortiz Case

On January 26, 2006, Oscar Antonio Ortiz, a former Border Patrol agent pled guilty to smuggling illegal aliens and to a false claim to U.S. Citizenship, among other things.

Question: 23. Please explain how Mr. Ortiz, or any other illegal alien, might be able to receive a security clearance and become a DHS employee?
Response: Pursuant to Executive Order 12968, as amended, "Access to Classified Information," non-U.S. citizens are not eligible for security clearances, except under limited conditions. DHS policy is designed to ensure that security clearances are only granted to eligible employees for whom an appropriate investigation has been completed.

Oscar Antonio Ortiz entered on duty with the U.S. Border Patrol, U.S. Immigration and Naturalization Service (INS), on October 28, 2002, following a Single Scope Background Investigation conducted by the U.S. Office of Personnel Management (OPM). The OPM investigation, dated August 12, 2002, reported that there was No Record of Mr. Ortiz' birth on file with the state Bureau of Vital Statistics in the State he claimed as his place of birth. The security specialist for INS sent Mr. Ortiz a letter requesting a faxed copy of his birth certificate. In response, Mr. Ortiz provided documentation he claimed verified his citizenship. At that time, there was no authentication made of these documents. Subsequent investigation determined the documents to be fraudulent.

Question: 24. What steps have been taken at DHS, and specifically CBP, to ensure this does not happen again? How can the Border Patrol be certain that it does not currently have other illegal aliens employed as agents?
Response: The Department is committed to ensuring that only those employees eligible for access to classified information are granted a security clearance. After the arrest of Mr. Ortiz, CBP ran more than 42,000 employees (legacy U.S. Customs, U.S. Border Patrol, INS, and Department of Agriculture Plant and Animal Inspectors) through the U.S. Citizenship and Immigration Services Central Index System (CIS)[1] to verify U.S. citizenship. During the course of running these employees through CIS, CBP identified another Border Patrol Agent who had fraudulently obtained a delayed birth certificate in the State of California. It was later determined that the Agent is actually a Mexican national. This case is currently under investigation by Immigration and Customs Enforcement.

Questions from Representative Bennie Thompson

Question: 1. Please expand on the One-Face-At-The-Border. Under this initiative, how many weeks of immigration training are legacy Customs and Agriculture officers given before assigning passenger processing duties? How many weeks of inspection training are legacy Immigration and Agriculture officers given before they are assigned cargo and baggage inspection duties? How many weeks of training are legacy Customs and Immigration officers given before being assigned agriculture duties?
Response: All CBP Officers and Agriculture Specialists, no matter their background, receive extensive Anti-terrorism and fraudulent document training while working in the passenger-processing environment.

New CBP Officers receive two years of On the Job Training (OJT) that includes thirty-three weeks of principally classroom instruction during the first year, and approximately twelve weeks of training in the second year. This training includes exposure to all environments within the CBP structure at their particular port of entry.

CBP Officers and Agriculture Specialists are not allowed to perform new functions or be transferred to other assignments without first receiving the mandatory cross-training associated with that function.

Legacy Customs officers receive over eighty hours of training though a combination of CD–ROM (8–10 hours) and classroom training. Thereafter, officers begin an extensive OJT program that includes working primary passenger processing with an assigned mentor. Before being asked to process more complex immigration cases in the secondary area, they are given an additional 136-plus hours of training in Unified Immigration Secondary Processing. Additional training is also received in Agriculture Fundamentals and Bio-Agro Terrorism.

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[1] The Central Index System is a records management system that contains automated biographical information on certain classes of aliens and naturalized citizens. The system includes information concerning apprehended aliens lawfully admitted for permanent residence (LAPR), those under adjusted immigration status, and those seeking or obtaining immigration benefits.

Legacy Agriculture officers, while not allowed to work primary passenger inspection (admissibility issues), receive approximately forty hours of familiarization training designed to instill in them an understanding of the laws and regulations applicable in the other CBP passenger areas. As part of this training, officers are instructed in immigration and customs fundamentals, immigration and customs law, and Customs Secondary, and receive shadowing assignments in primary.

Legacy Immigration officers receive forty hours of training through a combination of CD–ROM (8–10 hours) and classroom training before beginning an extensive OJT program in the Customs Secondary area, working in baggage inspectional areas.

Legacy Immigration officers and Agriculture officers also receive thirty-two hours of training before beginning an extensive OJT program in Cargo processing.

• What is the nature of this training? Is it classroom training? Is it CD–ROMs and booklets? Are these officers self-trained?

Response: CBP officers are not "self-trained." Incumbent officers, which include those officers who were employed prior to the March 1, 2003 merger, are required to participate in structured and specific cross-training courses prior to being assigned to complete a particular task or responsibility.

As of December 31, 2005, CBP has identified, built and distributed more than thirty-seven cross-training modules that range from a six-hour CD–ROM awareness course on Customs/Immigration Fundamentals to an eight day classroom session with many required pre-requisites and job-aids. All of the classroom sessions are followed by an on-the-job training component that requires both the supervisor and employee to assert that the employee is ready to perform those functions prior to being permitted to work unsupervised.

Under the current cross-training plan, legacy Customs officers must receive up to 31.7 weeks of training, which includes a combination of CD–ROM, classroom, and on the job training. A legacy Immigration Officer will receive up to 33.1 weeks of training, which also includes a combination of CD–ROM, classroom, and on the job training.

• How often are these legacy officers given a refresher course in the inspections functions area that they were not initially operating in?

Response: Under CBP's "just in time" / as needed philosophy, the instruction of all CBP officers must be meaningful and useful to officers. Therefore, CBP has developed training modules that are provided to officers just before they are assigned to new duties. They are then asked to remain assigned to those new functions for a significant period of time that is sufficient to learn the job and retain that knowledge.

CBP has instructed the field offices to retrain Officers who have rotated away from specific duties for more then six months. Last year our goal was to finish building thirty-six cross-training modules. CBP is currently restructuring the existing curriculum to incorporate "refresher courses" for CBP Officers who are experienced in a particular area. Officer assignments to such courses will depend on the complexity of the assignment, the length of time away from the assignment, and the individual officer.

• Do you work with the human capital officer at CBP to insure that the Department has a strategy to maintain inspections or immigration expertise? If so, please elaborate.

Response: Yes, CBP is part of the DHS Training Leadership Council and works to coordinate human capital issues, including training, across the Department.

2. Some federal agencies are making good use of their ability to repay employee student loans as a recruitment and retention technique. Under the federal student loan program, agencies can repay student loans up to a maximum of $10,000 in a calendar year to a total of $60,000 per employee. In return, the employee must sign a service agreement to work at the agency for at least three years. At a time when about half of all government employees are within five years of retirement, agencies must come up with innovative succession strategies. Using the student loan repayment program, along with other benefits such as flexible work schedules and telework, are way agencies can compete for younger applicants. At Secretary Chertoff's confirmation hearing, he stated, "I understand that the Department of Homeland Security provided guidance last year on the use of incentive programs for recruitment and retention, including repayment of student loans, but the student loan program has received little to no use. If confirmed, I will ensure that the Department reviews the adequacy of the guidance and the criteria used to remove any unnecessary restrictions limiting its use."

• **Is there today, over a year since his confirmation as Secretary, a student loan repayment program at DHS?**
Response: Yes. During fiscal year 2005 (FY 2005), 18 of these incentives, totaling $160,000, were provided to employees by DHS Components. Additional loan repayments have been authorized in FY 2006, and will be included in an annual report to OPM.

• **How much has DHS set aside to fund the student loan repayment program?**
Response: Funds for incentive programs, such as student loan repayment, are not budgeted independently, but are included with other benefit costs (object class 12.1), some of which—such as the student loan repayment program—can be used optionally.

• **How many DHS applicants have applied for the DHS student loan repayment program?**
Response: DHS has not established an application process. The Department uses the student loan repayment program as a recruitment and retention incentive; it is offered to employees by DHS Component managers when it is determined to be an appropriate tool to recruit or retain desired employees.

How many applicants have been accepted in the DHS student loan repayment program in 2005 and 2006?
Response: Please refer to the response above (Q03738). A total of 24 employees have been approved for the program in FY 05 and year-to-date in FY 2006.

• **What is the average loan amount for each successful student loan repayment applicant?**
Response: The average payment is $9,100.

3. On August 17, 2005, DHS issues a Management Directive establishing DHS policy regarding telework.
• **How many DHS employees today participate in the DHS telework program?**
Response: The latest numbers available from the Office of Personnel Management (OPM) are from FY04. In FY 2004, 1,938 DHS employees participated in the telework program. Data to confirm FY05 will not be available until OPM completes its agency-wide survey for FY05. These data are expected to be released from OPM in September and are expected to have increased.

• **How many employees are eligible to participate?**
Response: In FY04, 38,574 DHS employees were eligible to participate in telework. Data to confirm how many DHS employees are currently eligible to telework will not be available until OPM completes its agency-wide survey for FY05. We are expecting OPM to release this data in September.

4. I know that a letter dated February 27, 2006, from nine (9) Members of Congress from the DC metro area sent a letter to DHS regarding arbitrary restrictions on use of an existing telework agreement with the staff attorneys and other professional employees at the Customs and Border Protection Office of Rules and Regulations (ORR).
• **What is the status of the telework program at ORR?**
Response: The CBP Office Regulations and Rulings (OR&R) Flexiplace Program was established on August 4, 1997, and continues to be an active program today within the OR&R.

• **How many employees were indicated by their supervisors as able to telework without affecting the Office's mission?**
Response: Thirty employees, out of a total of seventy-four eligible employees, were approved by their respective supervisors for participation in the 2006 Flexible Program. These approvals, however, were based not upon consideration of the overall Office's mission, but the rather particular needs of the individual branch units at the time. Attorneys in CBP Office of Regulations and Rulings (OR&R) are covered by a rotation policy under which they may be rotated from one branch to another from year to year. Therefore, the individual branch chief's approval is not necessarily indicative of the impact of the total program upon the Office's mission. On May 15, 2006, Acting Commissioner Spero addressed this issue to the (9) Members of Congress from the DC metro area. Attached, for your information, is a copy of the signed letter by the Acting Commissioner.

• **How many eligible employees were denied telework opportunities at ORR because of a cap limiting telework to only 25% of eligible staff?**

Response: OR&R does not prescribe an arbitrary percentage cap limiting the number of employees eligible to participate in its Flexiplace Program. There are, however, limits on participation based upon availability of resources to equip and maintain what are essentially dual workstations (home and office) required for participation in OR&R 's Flexiplace Program. On May 15, 2006, Acting Commissioner Spero addressed this issue to the (9) Members of Congress from the DC metro area. Attached, for your information, is a copy of the signed letter by the Acting Commissioner.

5. This Subcommittee has been keenly interested in strengthening the authority of the chiefs in the Management Directorate to ensure that they get the cooperation they need on Department-wide initiatives. This authority can be enhanced through the ability to influence performance reviews and decisions about raises and promotions for human capital officers in component entities. Below is the legislative language our Subcommittee approved in March that sets out all the authorities.

AUTHORITY OF CHIEF OPERATING OFFICERS OVER DEPARTMENTAL COUNTERPARTS

(1) IN GENERAL.—The Under Secretary for Management shall ensure that chief operating officers of the Department, including the Chief Financial Officer, the Chief Procurement Officer, the Chief Information Officer, and the Chief Human Capital Officer, have adequate authority over their respective counterparts in component agencies of the Department to ensure that such component agencies adhere to the laws, rules, regulations, and departmental policies which the chief operating officers are responsible for implementing.

(2) INCLUDED AUTHORITIES.—The authorities of a chief operating officer pursuant to paragraph (1) shall include, with respect to the officer?s counterparts in component agencies of the Department, the following:

(A) Making recommendations regarding the hiring and termination of individuals.

(B) Developing performance measures.

(C) Submitting written performance evaluations during the performance evaluation process that shall be considered in performance reviews, including recommendations for bonuses, pay raises, and promotions.

(D) Withholding funds from the relevant component agency that would otherwise be available for a particular purpose until the relevant component agency complies with the directions of the chief operating officer or makes substantial progress towards meeting the specified goal."

• **After reviewing the provision, can you tell us, as the Chief Human Capital Officer, would you like this authority if it was statutorily granted? What impact will this authority have on your ability to execute your overall mission?**

Response: I do not believe that the authority needs to be statutorily granted. Currently the Department issues Management Directives (MDs) and the MD 0006, Human Capital Line of Business Integration and Management sufficiently addresses the activities identified above.

6. By all accounts, the formation of the Department has not been a painless exercise. We hear more than the run-of-the mill grumblings from workers about problems with management and cultural problems within the organization. We are in the middle of commencement time—when college students are looking around, trying to figure out what they want to do for a career. **Why should they want to come to the Department and make a career there as a border patrol agent or screener or any other area where there's a need for new staff?**

Response: The mission of homeland security is the most compelling reason why people seek employment with the Department.

Working for the Department of Homeland Security provides an opportunity to directly serve the citizens of the United States in a very tangible way—leading the unified national effort to secure America; preventing and deterring terrorist attacks and protecting against and responding to threats and hazards to the Nation. Our mission of ensuring safe and secure borders, welcoming lawful immigrants and visitors, and promoting the free-flow of commerce remains compelling—despite our growing pains.

7. DHS's employees claim that they are left in the dark about major changes in the operations, structure and management. Specifically, they say that the Department did not adequately prepare them for 2SR and all the organizational changes that followed. **What proactive actions do you take, at the headquarters level, to communicate to rank-and-file employees about structural or management changes at the Department?**

Response: When communicating major structural or management initiatives, the Department continues to review and improve how best to provide timely and relevant information to employees. Currently, DHS tailors its approach based on the nature of the information to be communicated. The issues involved may impact the entire Department, a specific Component or Components, or specific segments of the Department. Therefore, each issue is addressed in a different manner.

For issues determined to be of Department-wide interest, employees are typically communicated with directly using tools such as: an internal electronic newsletter (DHS Today), targeted email messages to all employees (cascaded through the Components), DHS-wide correspondence from the Secretary or Deputy Secretary, as well as posting of information to the DHS intranet site (DHS Online). If deemed necessary for the situation, key leaders from the Department meet directly with employees in interactive forums (i.e. town halls) or are shown live on Web casts and/or satellite broadcasts. Supporting the DHS-wide efforts are cross-Component committees such as the Internal Communications Committee which help streamline and coordinate the communication of departmental information.

For those issues that do not have broad, DHS-wide impact, the Department works with specific Component or organizational segments to provide targeted communications, using such tools as: unit-specific websites, "all hands" meetings, "muster meetings", unit-wide emails and hard copy memorandums or announcements. The Department often assists by providing Components with standard language or templates that can be used or modified as needed.

By leveraging all of these channels, it is the Department's goal to provide timely information on current initiatives to all impacted employees. We feel we are communicating with all levels of DHS employees on a regular basis, but we are always looking for new ways to improve our outreach and our messages to employees.

8. GAO has long been seen as the one example of a pay-for-performance system that works. Yet, a recent article indicated that some employees at GAO are unhappy with the pay-for-performance system. The Department of Defense has stumbled, much like DHS, with trying to establish a fair and equitable system. **What proof do you have that pay-for-performance will really work for this Department as a practical matter?**

Response: Performance-based salary-increases are virtually universal for white-collar employees in the private sector and have been shown to be a key driver of organizational success and retention of high-performing employees. In addition, alternative pay systems with performance-based pay have existed in the federal government for 25 years and today cover over 90,000 employees. Taken together, these systems represent a steady progression away from the current government-wide classification and pay systems toward alternative approaches where market rates and performance are central drivers of pay. These include DoD demonstration projects and independent systems currently in place at several large federal agencies—FAA, NIST and IRS to name a few. On August 28, 2006, the Department of Commerce expanded its pay for performance program to include up to 3500 employees in the National Oceanic Atmospheric Administration. The Department evaluated and analyzed the successes and shortcomings of several of these programs and best practices from the private sector in developing the MAX^{HR}7 program.

OPM's recent publication entitled, **Alternative Personnel Systems in the Federal Government and a Guide to the Future states:**

> Reviewing what happened when agencies implemented performance-based alternative pay systems surfaces five significant conclusions about their common experience:
>
> - Agencies discarded the General Schedule in favor of more practical classification and market sensitive pay.
> - Performance—not time—drives pay.
> - Success depends on effective implementation.
> - Employees have come to support alternative pay systems.
> - Agencies funded their systems out of existing budgets.
>
> These observations are supported by many years of cumulative data found in both internal and external evaluation reports. That support is not unqualified, and progress in some organizations has been slower, as would be expected with experiments. Nonetheless, the evidence presents clearly positive trends.

In addition to analyzing research that suggests that pay for performance can work at DHS, the Department has taken steps to ensure that it does. For this reason, Component and union representatives and employees have played significant roles in the design of the performance management program. DHS recognizes the integral role that a sound performance management program plays in ensuring an effective pay for performance system. To that end, the Department has put considerable ef-

fort into the design and implementation of the program, prior to linking it to pay and is requiring all managers and supervisors take a Performance Leadership Workshop and have access to a Coaching Hotline to ensure that they are adequately prepared to execute their performance management responsibilities.

As we move forward, we will continue to examine and evaluate our progress, as well as the effectiveness of our programs. We have learned that no one system is right for the culture of every organization. In addition, we must make a significant investment in training, communicate constantly with employees, and continually evaluate and adjust to ensure that we obtain the desired results.

U.S. Department of Homeland Security
Washington, DC 20229

U.S. Customs and
Border Protection

Commissioner

May 15, 2006

The Honorable Chris VanHollen
U.S. House of Representatives
Washington, DC 20515

Dear Congressman VanHollen:

Thank you for your letter of February 27, 2006, regarding the Office of Regulations and Rulings' (OR&R) Flexiplace Program. In your correspondence, you asked that U.S. Customs and Border Protection (CBP) increase OR&R employee participation in this program by eliminating an arbitrary percentage cap that limits the number of employees eligible to participate. CBP has recently completed its review of this matter. Please allow me to outline our findings.

As you are aware, the OR&R Flexiplace Program was implemented in 1996 and provides Headquarters-area OR&R attorneys and paralegals the opportunity to perform work assignments at their residence or other alternative work location for a portion of their designated workweek. This program is one of various flexible employee- and family-friendly work arrangement opportunities made available to OR&R employees. Other options offered to OR&R employees are Alternative Work Schedules, including compressed and flexible work schedules, as well as a variety of employee- and family-friendly leave programs and policies.

OR&R has found that, in combination, these programs have benefited the organization's ability to recruit and retain quality employees, increased employee morale and job satisfaction, and maintained employee and organizational performance levels. Employee participation in these programs is at an all-time high with approximately 80 percent of OR&R's eligible attorneys and paralegals taking advantage of flexiplace or compressed work schedules.

In addition to statutory and regulatory requirements, these programs must be implemented in accordance with the provisions and terms of collective bargaining agreements that have been negotiated with employee union representatives. Specifically, the OR&R's Flexiplace Program is governed by a negotiated agreement between the agency and a local National Treasury Employees Union (NTEU) chapter. For your reference, a copy of this agreement is enclosed.

OR&R also enjoys a productive relationship with its local NTEU chapter and regularly engages in open dialogue with its employee-elected officers regarding employee concerns and operational initiatives. As a result, in combination with the NTEU's

participation in the selection process, CBP is confident that the OR&R's Flexiplace Program continues to operate in accordance with statutory, regulatory, and negotiated requirements.

In response to the specific concerns raised in your letter, OR&R does not prescribe an *arbitrary percentage cap limiting the number of employees eligible to participate in its* Flexiplace Program. There are, however, limits on participation based upon availability of resources to equip and maintain what are essentially dual workstations (home and office) required for participation in OR&R's Flexiplace Program. Notwithstanding these limitations, for the 2006 Open Season, OR&R, through its joint management-union selection process, approved almost 74 percent of the employees who applied to participate in the program.

I appreciate your interest in Customs and Border Protection. If we may offer further assistance, please contact me or have a member of your staff contact Mr. Thaddeus M. Bingel, Assistant Commissioner, Office of Congressional Affairs at (202) 344-1760.

Sincerely,

Deborah J. Spero
Acting Commissioner

Enclosure