

**AN OVERVIEW OF THE DEPARTMENT
OF HOMELAND SECURITY FEDERAL ADVISORY
COMMITTEES**

FULL HEARING
OF THE
COMMITTEE ON HOMELAND SECURITY
HOUSE OF REPRESENTATIVES
ONE HUNDRED TENTH CONGRESS

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AN OVERVIEW OF THE DEPARTMENT OF HOMELAND SECURITY FEDERAL ADVISORY COMMITTEES

Wednesday, July 25, 2007

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
WASHINGTON, DC.

The committee met, pursuant to call, at 10:07 a.m., in room 311, Cannon House Office Building, Hon. Bennie Thompson [chairman of the committee] presiding.

Present: Representatives Thompson, Sanchez, Christensen, Etheridge, Cuellar, Carney, Green, Shays, Reichert, McCaul, and Davis of Tennessee.

Chairman THOMPSON. [Presiding.] I would like to convene the hearing.

Today's hearing is about the effectiveness of the Federal advisory committees within the Department of Homeland Security.

The department has 29 Federal advisory committees, 19 subcommittees, the equivalent of 33 Federal support staff, and nearly 500 members drawn from both the public and private sector.

To support these committees, the Department spent approximately \$6 million in fiscal year 2006 and plans to spend approximately \$8 million in fiscal year 2007.

This may not seem like a great deal of money. However, as the authorizing committee for this department, we must ask: What do the American people get for the dollars that have been spent? And I am sorry to report that the answer to this question is unclear.

Advisory committees have been around for many years. These committees can be a good thing. Advisory committees allow members of the public to express their opinions on policies that will affect the ways in which they go about their daily lives.

Advisory committees also include representatives from the private sector. It is no secret that the policies put forth by the department have an effect not only on how the private sector conducts business but on the profitability of those businesses.

Advisory committees provide a seat at the table to those who will be affected by the decisions that are made by the government. And that is what representative government should do.

However, the beneficial function of these committees is meaningless if the department does not listen to them. The good ideas that may be born in these committees are unclear if there is no way to track them.

The objectivity of these committees is compromised if their composition is not both balanced and diverse. It is up to the depart-

ment to assure that the people who serve on these committees' views will be heard, their recommendations will be considered, and their ideas will be received with openness.

And it is up to the department to ensure this Congress that there is transparency in the process, accountability in the result, and that conflicts of interest do not pervade their operation. I am not convinced that these goals are being met.

We are here today to hear from the department and individuals who served on advisory committees.

I want to thank the witnesses for appearing today, and look forward to their testimony.

And now we will hear opening statements from the ranking member, Mr. McCaul.

Mr. MCCAUL. Thank you, Mr. Chairman. And thank you for holding this important hearing.

This committee is conducting a bipartisan examination of Federal advisory committees managed by the Department of Homeland Security to assess their utility, cost-effectiveness, management and how well they represent the private sector.

Advisory committees can be created administratively or by statute. The topics range from information security to customs fees to navigating the Great Lakes.

The committee will assess whether the existing organizational structure within DHS for managing the advisory committees should be strengthened. We are also reviewing whether some of these advisory committees should be consolidated, phased out, or replaced by a mission more relevant for the Department of Homeland Security.

As this review proceeds, it is important to keep it in context. Currently, there are approximately 900 advisory committees throughout the Federal Government, with a total budget of over \$620 million. Of that, DHS has 27 active committees, with an accumulate annual budget of approximately \$8 million.

Many of the DHS advisory committees were established before DHS was formed in March of 2003 and are so new that they have not yet had the chance to submit recommendations. DHS is also currently conducting its own internal review to improve the operation of their advisory committees.

Today we will hear from our witnesses on their views on how the advisory committees at DHS are working and whether additional steps can be taken to strengthen their effectiveness. I look forward to hearing from these witnesses, and yield back the balance of my time.

Chairman THOMPSON. Thank you very much.

Other members may submit their statements for the record.

We have two witnesses for our first panel: Doug Hoelscher, he is executive director of DHS Homeland Security Federal Advisory Committees; Mr. Robert Flaak is director of Committee Management Secretariat, Office of Government-Wide Policy, U.S. General Services Administration.

Gentlemen, you have 5 minutes to summarize your written testimony for the committee.

We will begin with Mr. Hoelscher.

**STATEMENT OF DOUG HOELSCHER, EXECUTIVE DIRECTOR,
HOMELAND SECURITY ADVISORY COMMITTEES,
DEPARTMENT OF HOMELAND SECURITY**

Mr. HOELSCHER. Thank you, Chairman Thompson and distinguished committee members, for the opportunity to discuss the role of Federal advisory committees at the Department of Homeland Security, or DHS.

Our advisory committees add much value to the new department by bringing the perspectives of our various state, local and private-sector partners to the policy table. As members of this committee well-appreciate, DHS depends on its various partners to successfully execute our mission.

As executive director of the Homeland Security advisory committees, I have a dual role. First, I oversee the staff of the committee management office, or CMO, which manages coordination of DHS advisory committees and ensures compliance with the Federal Advisory Committee Act, or FACA. Second, I directly manage the staff supporting the Homeland Security Advisory Council, or HSAC, one of our 27 chartered committees.

Starting the department required a lot of work, and we have made great progress in the last 4 years. We inherited 24 advisory committees with varying responsibilities and procedures from the departments of Commerce, Defense, Justice, Transportation, Treasury, the Federal Emergency Management Agency, or FEMA, and the Executive Office of the President.

We ensure that advisory committees are serving a useful purpose and terminate those committees that are no longer relevant. We only create new committees when necessary.

The CMO monitors reporting compliance for the FACA database and ensures that broad professional perspectives are included in each committee's membership. We have several initiatives planned for the next year that will establish a lasting foundation for the committee management program and further standardize committee actions, including the revision of the department's management directive and creation of a Web page where individuals can learn more about FACA committees.

Each committee has a designated Federal officer, or DFO, that is ultimately responsible for FACA compliance and for their committee's day-to-day management. We recently worked with human resources to strengthen the accountability of DFO responsibilities with their performance appraisals. We will hold a best-practices DFO group meeting this fall and are planning an Internet site that DFOs and other DHS personnel can use to access key documents.

The committee management process improvements have increased the accountability and openness of our committees. I would like to now highlight some examples of policy improvements our advisory committees have accomplished.

In my time of overseeing the HSAC, we have improved feedback to members on previous recommendations. Through the HSAC, I have seen firsthand how advisory committees help the department tackle current and future challenges and improve policy decisions by including the perspectives of our various partners and adding expertise not available from Federal employees.

The HSAC is composed of experts from state and local governments, first-preventer and-responder communities, academia, and the private sector. The council provides advice to Secretary Chertoff and the department's leadership on the spectrum of homeland security issues.

The HSAC has a history of focusing on tough issues. From recommendations on expediting funding to our state and local partners, developing the fusion center concept, honestly assessing the department's culture, or looking at the long-term future of terrorism, the HSAC has helped us progress. For example, the "Future of Terrorism" report increased DHS's focus on the radicalization issue and improved outreach to Muslim Americans.

In June, Secretary Chertoff tasked the HSAC with the following: first, assess the utility, viability and potential structures of alternative tools to acquire essential technology; two, provide recommendations on core priorities the department should embrace in the administration transition; and third, help refine and focus the Secure Freight Initiative's concept of operation.

The work of the Commercial Operations Advisory Committee, or COAC, and the National Maritime Security Advisory Committee, is another example of committees adding value to the department. These committees improve the draft strategy to enhance international supply chain security, addressing stakeholder concerns by clarifying departments programs, recovery methods, and facility and vessel security plans.

The continuing engagement of both these committees during the next 3 years will help balance the needs of security with the facilitation of trade. This also demonstrates interdepartment coordination, as each committee is in a different component.

There are many more examples of ways our advisory committees have helped us move forward in our first 4 years. I am truly inspired by the selfless dedication of our volunteer advisory committee members in advancing the homeland security mission, and I am proud to serve alongside the men and women at the Department of Homeland Security.

Thank you for the opportunity to highlight an important avenue of empowering our homeland security partners. I look forward to our future work together.

Chairman Thompson, distinguished members, I look forward to your questions.

[The statement of Mr. Hoelscher follows:]

PREPARED STATEMENT OF DOUG HOELSCHER

I. Opening Remarks

Chairman Thompson, Congressman King, and the distinguished members of the Committee. Thank you for the opportunity to speak with you today about the Department of Homeland Security's federal advisory committees.

In March 2006, I was appointed Executive Director of the Homeland Security Advisory Committees. In this capacity, I serve the dual role of coordinating the activities of our twenty-seven (27) active federal advisory committees and directly manage one of these bodies, the Homeland Security Advisory Council (HSAC). I oversee the staff of the Committee Management Office (the CMO), which coordinates the establishment, structure, and legal compliance of the Department's advisory committees, and the staff dedicated specifically to HSAC. I will speak broadly to the structure and activities of the Department's advisory committees and specifically to that of the HSAC.

The Department of Homeland Security, perhaps more than any other federal department, depends on its state, local, and private sector partners to accomplish its mission. Through their volunteer members, our federal advisory committees, provide an important avenue to empower our various partners and bring outside-the-beltway perspectives to the policy table. We have very active advisory committees. In managing them we have made great progress since DHS was established, but there is more work ahead.

II. Overview of Federal Advisory Committee Act of 1972

Our advisory committees are part of a larger Federal initiative to tap relevant external perspectives to help formulate sound policy. The advisory committee program is governed by the Federal Advisory Committee Act of 1972, commonly known as FACA. FACA enhances public openness and accountability of advisory committees, controls undue influence of special interests by balancing committee membership; and reduces wasteful expenditures on advisory committees by establishing overall management controls. These controls monitor advisory committee costs and identify and eliminate unproductive and/or unnecessary committees. FACA places limits on the function and duration of advisory committees and stipulates certain oversight requirements. My colleague on this panel, Mr. Robert Flaak, from the General Services Administration, is better positioned to discuss the details of FACA.

III. History of Advisory Committees at Department of Homeland Security

When the Department of Homeland Security was formed in 2003, the operations of twenty-two (22) existing federal agencies dealing with various aspects of Homeland security were combined. The Department also inherited twenty-four (24) legacy advisory committees from the Departments of Commerce, Defense, Justice, Transportation, and Treasury, the Federal Emergency Management Agency (FEMA), and the Office of the President.

The CMO is responsible for reviewing the mandates and activities of the various committees to ensure that they continue to be useful and relevant to the Homeland Security mission. In 2003, the then Acting Committee Management Officer worked with the staffs of our inherited or legacy committees to review the purpose and function of each committee and assure there was no duplication of function. We initially identified two committees that were performing a very similar function: the Immigration and Naturalization Services Airport and Seaport User Fees Advisory Committee from the Department of Justice and the U.S. Customs Service Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) Fees Advisory Committee from the Department of the Treasury. The functions of both committees were assumed by the Airport and Seaport User Fees Advisory Committee, and the COBRA Fees committee became administratively inactive.¹

Since that time, as a result of the CMO's review, we have terminated four additional committees that have completed their mission or are no longer relevant. We are currently contemplating further contraction of the committee structure and, in particular, we are reviewing whether the establishment of FEMA's National Advisory Committee (NAC), renders any of the existing FEMA advisory committees duplicative. As a result of this review, we may take action to terminate one or more additional existing committees and execute their advisory functions through the NAC. Where appropriate, we will continue to terminate any unnecessary discretionary committees and will work with Congress to terminate statutory committees if appropriate.

As I mentioned earlier, when the Department was established we inherited twenty-four (24) committees from other agencies. Since then, we have established new committees only as necessary to address new initiatives or as directed by Congress, and have terminated those committees that have completed their mission or that have missions that are no longer relevant. The FACA database currently lists twenty-nine (29) advisory committees for DHS; two (2) were terminated this year and will be deleted from the database in the next fiscal year. Thus we have twenty-seven (27) chartered committees: fifteen (15) statutory, ten (10) discretionary, and two (2) presidential. Twelve (12) of our committees exist at the Administration's discretion and the remaining fifteen (15) are committees created by Congress.

During Fiscal Year 2006, DHS FACA committees held over 100 formal meetings.

IV. Current DHS Advisory Committees

Under Section 8 of FACA, the CMO is responsible for establishing uniform policies, administrative guidelines, and management controls for the establishment, supervision, and operation of Departmental advisory committees. The CMO develops

¹The COBRA Fees Advisory Committee is an example of a statutory committee that requires legislative action to be officially terminated.

policies and provides guidance on the interpretation and implementation of FACA. Since the Department was established, the CMO has coordinated over 50 membership packages and over 50 charter actions, and regularly monitors compliance with FACA including input into the GSA FACA database, ensuring that diverse viewpoints are included in committee membership, and publication of federal register notices. Each FACA committee has a Designated Federal Officer, or DFO, who is ultimately responsible for compliance with FACA and for the day-to-day management of committee activities.

In the last four (4) years, the CMO has accomplished a great deal. In 2003, the then-acting, Committee Management Officer, without any staff support, stood up the FACA management program for DHS and incorporated 24 existing FACA committees into the Department. Since then, we have standardized committee actions throughout the Department and improved the timeliness of FACA database reporting. Very recently, working with congressional staff, we took actions to standardize recommendation reporting in the GSA FACA database. We now have two full-time CMO staff and I personally spend a significant amount of my time working on CMO-related items. The CMO became part of the Policy Directorate in 2006, strengthening the cross-pollination of our committees and heightening policy follow-up on committee recommendations.

We have several initiatives designed to further solidify the committee management structure at DHS. These initiatives will elevate the visibility and accountability of the DFO positions and committee management Department-wide. First, we have concluded that we need to revise the Department's management directive for FACAs. The new directive will clarify the CMO's authority and responsibilities and set forth responsibilities of other Department personnel for FACA activities, including component heads and Designated Federal Officers. The directive will make clear that Component heads are responsible for ensuring that their employees comply with the requirements of FACA, Committee Management Secretariat regulations, the directive, and other guidance issued by the CMO, and that they cooperate with the CMO in the management of the FACA program.

Second, over the last year, we have improved communications to DFOs and have plans for further improvement. We have increased the information flow on relevant initiatives and policies to DFOs and committee members. We have also increased the frequency of our meetings with DFOs. We will have a group meeting this fall of all DFOs to provide updates on policies and procedures and to solicit input from the DFOs. Additionally in the next year, the CMO will develop an intranet site that will provide information on FACA and serve as a resource for DFOs and all Department personnel. This site will provide a one-stop location for information on procedures and provide templates for routine documents such as action memoranda, charters, and Federal Register notices. The DFO Handbook, which is under development and set for completion in the next year, will also be included.

Third, in the next year, we plan to develop an external one-stop web page that will include information on all DHS FACA committees, including links to individual committee web pages. This will enhance the transparency of the DHS FACA process and provide ready access to information about our committee's work.

Fourth, we recently worked with the Chief Human Capital Officer and issued a memorandum that strengthens the accountability of each DFO's performance with their supervisors. At DHS, our performance plans lay out yearly goals along with quantifiable measures. The employee is responsible for drafting the goals and reaching a consensus with her/his supervisor. This action will help ensure management responsibilities are a part of the formal employee appraisal process and will increase accountability of committee activities and performance.

We look forward to updating your committee on our progress on these initiatives in the coming months.

In the last year and half since my arrival, we have increased our coordination with Congress. I and/or members of my staff have come to the Hill three times to provide an overview of DHS advisory committees and to discuss the activities of the Homeland Security Advisory Council. Last fall we invited staff members of both the majority and minority to join a meeting of our Culture Task Force and have increased the number of our invitations to Congressional staff for advisory committee meetings in general. Members of Congress have participated in three (3) meetings of the Homeland Security Advisory Council in the last year and half.

Taken together, these steps have greatly strengthened the Department's ability to use and manage its FACAs. As might be expected, when DHS was initially formed the managerial styles and structures used by the legacy agencies for FACAs varied widely. Since then we have made substantial progress in rationalizing these structures and putting in place the management processes of a single Department. While, as I have outlined, more surely remains to be done, we have succeeded in

unifying widely disparate structures in a single office and brought order to their operation.

V. Homeland Security Advisory Council

Let me now move from the macro to the micro, looking at committee management from my perspective as the DFO for the HSAC. The HSAC provides advice and recommendations to the Secretary of the Department of Homeland Security on a broad spectrum of matters relating to homeland security.

The members of the HSAC are leaders and experts from the private sector, academia, nongovernmental organizations, state and local governments, and other appropriate professions and communities. In addition, the Chairman of the National Infrastructure Advisory Council, the Chairman of the President's National Security Telecommunications Advisory Committee, and the Chairman of the Panel on the Science and Technology of Combating Terrorism/President's Council of Advisors on Science and Technology, serve as ex officio members of the HSAC. The Chair of the HSAC is Judge William Webster. All members volunteer their time to tackle challenging homeland security issues and their service is greatly appreciated.

There are five subcommittees of the HSAC: the State and Local Senior Advisory Committee, the Emergency Response Senior Advisory Committee, the Academe and Policy Research Senior Advisory Committee, the Private Sector Senior Advisory Committee, and the Rice-Chertoff "Secure Borders and Open Doors" Advisory Committee.

The HSAC has issued fifteen (15) reports that include 175 formal recommendations. One example of the value the HSAC has added is through the work of the Intelligence and Information Sharing Working Group, which helped define state and local fusion center operations and provided foundational principles as the local, state, and federal governments have developed fusion centers throughout the country. This is a great example of how the work of an advisory committee has helped empower our partners and expand our networks to match those of our enemies. These fusion center recommendations, like other HSAC recommendations, were developed from the "bottom-up" by those that will have to implement and execute them outside the beltway. One of my responsibilities is to ensure that committee members have a forum where they can be independent, innovative, non-partisan, and inquisitive so they can provide the best possible advice to the Secretary.

We have strengthened the synchronization between HSAC efforts and the needs of the Department. In January of this year, the HSAC delivered two reports on topics of the Secretary's choosing—one on the Future of Terrorism and another on Improving DHS Culture. In June, HSAC staff coordinated written feedback on the Department's response to the Future of Terrorism recommendations and, where appropriate, what actions had been taken to implement each recommendation. One of the primary recommendations was to create an Office of Net Assessment at DHS similar to the one at the Department of Defense, and the Secretary has tasked the Office of Strategic Plans and the Intelligence and Analysis office to develop implementation options.

Similarly, the report on DHS Culture has gotten high level attention. The DHS Chief of Staff and the Chief Human Capital Officer have met several times with the co-chairs of the task force and briefed HSAC and subcommittee members twice about departmental initiatives in response to their report.

We have made great strides in the past year and a half on providing clear feedback on member recommendations. We have recently engaged in a project to improve tracking each of the 175 recommendations the HSAC has given in its lifetime and to receive written feedback from all relevant offices and components responsible for their implementation if appropriate. Sometimes, of course, a particular recommendation may not be implemented. We may have resource constraints or the Department may simply choose a different policy. But we are committed to reviewing and responding to each and every recommendation.

Moving forward, all of our recommendations will be tracked in this way, creating a tool useful for feedback to advisory committee members, recordkeeping, and historical perspective. We take the responsibility of giving feedback to HSAC members very seriously because they are volunteers. If the Department chooses not to implement a recommendation the members deserve feedback on the rationale behind that decision.

This fall, we will continue to work with the DFOs of the other DHS advisory committees, to institute similar tracking mechanisms for their respective recommendations where such mechanisms do not yet exist.

VI. The Value of FACAs

Thus far we have discussed the processes by which FACAs are managed. I would like to turn now to a discussion of the value FACA committees add to the Depart-

ment as we seek to carry out our strategic mission. Here are some examples of that value:

The Aviation Security Advisory Committee, or ASAC, was established to provide a key forum for the exchange of views and information on civil aviation security issues. Since its inception in 2003, ASAC has provided 46 formal recommendations to the Department. One example of the ASAC's value was its review of the Transportation Security Administration's (TSA) Baggage Screening Investment Study, which helped improve Airport Security Access Control Systems, including biometrics.

The Chemical Transportation Advisory Committee (CTAC) provides advice to the Coast Guard's Assistant Commandant for Operations with respect to the water transportation of hazardous material in bulk. CTAC has made many significant contributions since its creation in the 1940s. Most recently, CTAC's recommendations on implementing the revised International Convention for the Prevention of Pollution from Ships (MARPOL) Annex II and the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code), has received international recognition for its ingenuity and fiscal responsibility. CTAC developed marine emergency responders' competencies that will be incorporated into nationally recognized National Fire Protection Association standard.

Another committee that has received recognition for excellence is the Data Privacy and Integrity Advisory Committee (DPIAC). In the past year and a half, the Committee has issued five reports to the Department. The Department has used the report "Framework for Privacy Analysis of Programs, Technologies, and Applications" has been utilized by the Department to analyze the effects of various programs and technologies on privacy, and the New Zealand government has even expressed interest in the document's methodology. The report "Use of Commercial Data to Reduce False Positives in Screening Programs" was adopted September 28, 2005. The Secure Flight Program found this report particularly helpful in addressing the issue of adverse impacts on the public. Indeed, the Privacy Office is integrating portions of the report into the soon to be released Privacy Impact Assessment Guidance for the Department. This report is frequently used when components propose programs incorporating such data.

Since the National Infrastructure Advisory Council's (NIAC) inception in late 2002, the Council has released thirteen (13) reports, with two (2) more slated for completion this fall. The Sector Partnership Implementation Report and Recommendations helped establish an initial governing structure to work with our various private sector partners in an organized fashion. The report offered numerous recommendations designed to enhance the public-private sector partnership as well as to ensure trust and cultivate an effective, close working relationship between both spheres. This report laid the foundation for the following partnership avenues: Sector Coordinating Councils, Government Coordinating Councils, the Partnership for Critical Infrastructure Security, and the relatively new Critical Infrastructure Partnership Advisory Council. These organizations all play integral roles in aiding in the function of and maintaining the public-private critical infrastructure partnership.

The National Maritime Security Advisory Committee (NMSAC) was active in developing the Transportation Worker Identification Credential (TWIC) Notice of Proposed Rulemaking (NPRM). The Committee formed a workgroup to address credentialing and provided input on specific questions posed by the Coast Guard and TSA. This work resulted in a maritime operating requirements document, as well as technical card and reader specifications which meet maritime industry needs, both of which may be used during the TWIC pilot tests and subsequent implementation nationwide. The Commandant of the Coast Guard recently expressed his views regarding the value this committee has added: "I want you to be aware of the excellent intra-department support we received. . .the [TWIC] working group preformed in a remarkable manner to ensure that the views and participation of industry and labor were considered at the front end of the TWIC version II effort as the government works toward a meaningful, realistic card reader requirement that balances security with commerce. . .NMSAC continues to prove its value to the Department through their diligent work and should be viewed as a resource to gain valuable insights as we move forward in other areas of maritime security."

These are just a few examples of how our advisory committees have assisted us in improving policy and ultimately carrying out our mission.

VII. Concluding Remarks

Thank you for the opportunity to address the Committee and highlight an important avenue of empowering our Homeland security partners. Chairman Thompson

and Congressman King, I welcome any questions you have, and look forward to our future work together.

Chairman THOMPSON. Thank you very much.
We will now hear from Mr. Flaak.

**STATEMENT OF ROBERT FLAAK, DIRECTOR, COMMITTEE
MANAGEMENT SECRETARIAT OFFICE OF GOVERNMENT-
WIDE POLICY, GENERAL SERVICES ADMINISTRATION**

Mr. FLAAK. Chairman Thompson, members of the committee, my name is Robert Flaak. I am the director of the GSA's Committee Management Secretariat. Thank you for the opportunity to discuss with you today the important role played by Federal advisory committees in achieving the missions assigned to the executive branch.

While the use of citizen advisors has been called upon since the early days of the republic to obtain objective and informed advice, it was not until the end of the Second World War that advisory committees became institutionalized as a unique tool of Federal Government.

As the influence and number of advisory committees grew, so did the concerns within the executive and legislative branches over their management, their cost, and their accountability. In 1962, President Kennedy issued an executive order to begin this management process. That was further enhanced in 1964. And in 1972, Congress passed the Federal Advisory Committee Act, or FACA.

Simply put, the purpose of FACA is to illuminate how agencies make decisions based upon advice and recommendations from persons outside the government, and while also making sure that the costs to support advisory committees are commensurate with the benefits that are received.

In my full testimony, Mr. Chairman, I have provided a complete listing of the act's most significant provisions. To summarize, the secretariat is responsible for issuing policy and to provide a framework for government-wide oversight of advisory committees.

On the other hand, agencies have joint responsibility, from implementing the act and for issuing additional guidance and guidelines that are needed to address their unique requirements.

At the agency level, committee management officers, or CMOs, are responsible for implementing FACA on behalf of the agency head. Each committee has a designated Federal officer, or DFO, who must work with the CMO to manage the work and the operations of that committee. Together, the two are responsible for ensuring compliance with FACA, agency-specific requirements and procedures, regulations issued by my office, as well as any other applicable statutes and regulations.

Although the act is quite detailed in the specific procedures agencies must follow with respect to the establishment of advisory committees, the conduct of meetings and the availability of records, it does provide substantial flexibility to agency heads in other areas, such as membership selection, tenure, and procedural issues, such as quorum and voting procedures.

This is appropriate, given the diverse needs of the executive branch and the necessity for agencies to quickly adopt new operating procedures where conditions warrant.

While the act does not provide provisions addressing committee member conflicts of interest—these are handled by the U.S. Office of Government Ethics—the act does include two important provisions designed to provide objectivity of advisory committee deliberations.

First, FACA requires that the membership of advisory committees be fairly balanced in the points of view represented and the functions to be performed by the committee. And second, the act requires provisions to assure that advice and recommendations will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment.

Thus, while the act stresses the importance of assuring an advisory committee's independent judgment, it also requires, at a minimum, the composition of advisory committees reflect the expertise and interests that are necessary to accomplish a given committee's mission.

I would like to point out a number of the issues that my office works within—the framework to provide compliance and oversight to the agencies across the executive branch.

There are several examples, one of which is we have a desk officer program. We have desk officers in my office, my staff, who operate independently with their agencies. They work closely with the CMOs on advisory committee establishments, renewals and terminations; FACA policy interpretation, as applied to various aspects that come up within that agency; and, of course, the best-practice guidelines that help them do their job on a day-to-day basis.

We also use a Web-based shared management system—some people call this our FACA database—which we use to manage and compile data required in the completion of the annual comprehensive review program required by the Federal Advisory Committee Act. We measure agency compliance in a red-green-yellow mode, much like the government does in many other areas.

The secretariat has also incorporated performance measures for advisory committees in that shared management system. We administer an advisory committee engagement survey every other year to advisory committee members and staff.

We also chair the Interagency Committee on Federal Advisory Committee Management, which brings all of the committee management officers together every quarter to look at important issues and compliance act factors and to bring them up to date on things that they need to know about.

And finally, we conduct a training course that is held about five to six times a year in the Washington, D.C., area for all of the FACA professionals that can attend it. And that typically covers 300 to 400 people every year, and it has been run since 1989.

Mr. Chairman, members of the committee, that concludes my prepared statement. I would be delighted to answer any questions you may have.

[The statement of Mr. Flaak follows:]

PREPARED STATEMENT OF ROBERT FLAAK

Mr. Chairman, Members of the Committee, I am pleased to discuss with you today the important role played by Federal advisory committees in achieving the missions assigned to the Executive Branch.

More than a quarter-century before the enactment of the Federal Advisory Committee Act (FACA) in 1972, the Government began to recognize the important role played by advisory committees in developing effective policies. While the use of citizen-advisors has its roots in the earliest efforts of the Nation's leaders to obtain objective and informed advice, it was not until after the end of World War II that advisory committees became institutionalized as a unique tool of democratic government. For example, it was an advisory committee, the Hoover Commission, whose work laid the foundation for the creation of the General Services Administration (GSA) in 1949.

As the influence and number of advisory committees grew, so did concerns within the Executive and Legislative Branches regarding their management, cost, and accountability. In 1962, President Kennedy issued Executive Order 11007 establishing guidelines for using such groups. These guidelines were expanded in 1964, with the issuance of the original Bureau of the Budget Circular A-63.

Federal information policy relating to the accessibility of government records was revised in 1966, following the enactment of the Freedom of Information Act (FOIA). In 1972, similar openness policies were applied to the use of advisory committees through the enactment of FACA. Later in the 1970's, the two remaining cornerstones of Federal access policy, the Privacy Act (1974) and the Government in the Sunshine Act (1976) were enacted by the Congress.

The Congress passed the Federal Advisory Committee Act in 1972 to accomplish two important objectives: (1) to establish the means for providing Congressional and Executive Branch oversight over the number and costs of advisory committees; and (2) to ensure that advisory committees operate in plain view of the public. Simply stated, the Act's purpose is to illuminate how agencies make decisions based upon advice and recommendations from individuals outside of Government, while also making sure that the costs to support advisory committees are commensurate with the benefits received. Since 1972, the Act's coverage has been extended to more than 4,300 advisory committees made up of an estimated 950,000 members.

Today, advisory committees are used by over 60 agencies to address issues that reflect the complex mandates undertaken by the Government. During fiscal year 2006, over 65,000 committee members served on 1,000 committees and provided advice and recommendations on such matters as the safety of the Nation's blood supply, steps needed to address the management of natural resources and the country's national defense strategies.

OVERVIEW OF GSA RESPONSIBILITIES

Several important government-wide roles and responsibilities are assigned by the Act to the Administrator of General Services and to the Committee Management Secretariat which, taken together with those specific functions reserved for the Congress and Executive Branch Departments and agencies, are designed to improve the management and accountability of advisory committees. Among the statutory responsibilities assigned to the Administrator are:

- Conducting an annual comprehensive review covering the performance of, and need for, existing advisory committees (section 7(b));
- Issuing regulations, guidelines, and management controls of governmentwide applicability (section 7(c));
- Providing for adequate notice to the public regarding committee meetings (section 10(a)(2)(3));
- Issuing guidelines on committee member compensation in conjunction with the Office of Personnel Management (section 7(d));
- Providing for follow-up reports on public recommendations of Presidential advisory committees (section 6(b)); and
- Assuring that advisory committees are established in accordance with the Act's requirements (section 9).

OVERVIEW OF AGENCY RESPONSIBILITIES

Responsibilities assigned to agencies that sponsor advisory committees subject to FACA include:

- Issuing and maintaining uniform administrative guidelines and management controls (section 8(a));
- Appointing a Committee Management Officer (CMO) to provide oversight of the agency's entire committee inventory (section 8(b));
- Consulting with the Secretariat regarding proposals to establish advisory committees (section 9(a)(2));
- Filing Charters with the Congress prior to initiating committee activities (section 9(c));
- Maintaining records, minutes, and reports covering closed meetings (section 10(b)(c)(d));

- Appointing a Designated Federal Officer (DFO) for each committee (section 10(e));
- Maintaining financial records (section 12(a));
- Providing support services (section 12(b)); and
- Terminating advisory committees as appropriate, consistent with FACA (section 14(a)(1)(A)).

FACA PROCEDURES

While FACA is generally recognized for its emphasis on justifying the number and costs of advisory committees, its provisions governing access to committee meetings and records are equally important. FACA's goal is to provide the broadest possible contemporaneous access to meetings of, and materials generated for or by, Federal advisory committees during their deliberations. In particular, Section 10 of the Act provides that:

- Each meeting of an advisory committee must be open to the public, except for those closed or partially-closed pursuant to specific exemptions contained in the Government in the Sunshine Act (section 10(a)(2));
- Timely notice of each meeting must be published in the Federal Register (section 10(a)(2));
- Interested persons may appear before, or file statements with, an advisory committee, subject to reasonable operating procedures established by an agency (section 10(a)(3));
- Documents prepared for or by, or otherwise made available to, an advisory committee must be accessible for public inspection and copying at a single location, subject to exclusions provided under the FOIA (section 10(b)); and
- Minutes of each open or partially-open meeting must be kept and made available to the public (section 10(c)).

Agency CMOs are responsible for implementing FACA on behalf of the agency head. Each DFO must work with their respective CMO to implement the Act's requirements at the individual committee level. Together, the CMO and DFO are responsible for ensuring compliance with FACA, the agency's internal operating procedures, regulations issued by GSA, and any other applicable statutes or regulations, such as those issued by the United States Office of Government Ethics (OGE), the National Archives and Records Administration (NARA), or the Office of Personnel Management (OPM).

COMMITTEE COMPOSITION AND RELATIONSHIP TO AN AGENCY

The Act does not include provisions covering individual committee member conflicts of interest. The applicability of conflict of interest laws and various ethical requirements for members of advisory committees who serve as Special Government Employees (SGEs), are covered by other laws and regulations issued by the U.S. Office of Government Ethics.

The Act, however, does include two important provisions designed to promote the objectivity of advisory committee deliberations. First, sections 5(b)(2) and (c) require that "the membership of the advisory committee. . . be fairly balanced in terms of the points of view represented and the functions to be performed by the committee." Second, sections 5(b)(3) and (c) require "provisions to assure that the advice and recommendations will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment." Thus, while the Act stresses the importance of assuring an advisory committee's independent judgment, it also requires that the composition of advisory committees reflect the expertise and interests that are necessary to accomplish the committee's mission.

The Act does not define those factors that should be considered in achieving "balance." However, the Secretariat's regulations provide that, ". . . in the selection of members for the advisory committee, the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the committee. Committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed." (41 CFR 102-3.60(b)(3)) In their efforts to balance the points of view of a committee's membership, agencies focus primarily on the subject matter to be addressed by the committee; nevertheless, while not required by law, other factors may be appropriate in relation to a committee's function, such as geographical representation; racial or ethnic diversity; occupational affiliation; or the need to consult with State, local, or tribal governments.

Similarly, FACA does not outline specific steps that must be taken to ensure that advice and recommendations offered by an advisory committee are free from inappropriate influence by the appointing authority or special interests. Accordingly,

each agency is responsible for developing specific operating procedures, consistent with the Act and GSA's regulations to ensure an advisory committee's independence, and to promote a balanced committee membership.

FACA'S SYSTEM OF CHECKS AND BALANCES

Although the Act is quite detailed in the specific procedures agencies must follow with respect to the establishment of advisory committees, the conduct of meetings, and the availability of records, it provides substantial flexibility to agency heads in other areas, such as membership selection and tenure. GSA believes this is appropriate given the diverse needs of the Executive Branch and the necessity for agencies to quickly adopt new operating procedures where conditions warrant.

FACA also includes a variety of procedural safeguards to ensure that advice and recommendations tendered by an advisory committee are properly obtained by an agency through a public process prior to final agency action. In particular, the Act's provisions requiring open meetings and summaries of closed or partially-closed meetings, the ability of the public to provide written or oral statements to a committee, and access to committee minutes and records reinforce the Act's goals of maintaining committee independence and freedom from inappropriate influence of special interests. These "checks and balances," rooted firmly in the principle of government in the sunshine, have contributed to the success of advisory committees over the past thirty-five years.

COMPLIANCE AND OVERSIGHT

The Secretariat provides agencies with the tools to ensure successful oversight of their federal advisory committee program, using a combination of shared management approaches, web-based tools, interagency coordination, and the application of best practice guidance. Compliance and oversight are managed by the Secretariat through the following:

- Secretariat Desk Officers coordinate advisory committee establishments, renewals and terminations, FACA policy interpretation, and best practice guidance on a continuous basis with assigned Committee Management Officers (CMO);
- The Secretariat uses a web-based Shared Management System to manage and compile data required in the completion of the annual comprehensive review (ACR) of advisory committees required by the Act (section 7(b)). Agency compliance is measured via a publicly-accessible scorecard (red-yellow-green);
- The Secretariat has incorporated performance measures for advisory committees in the Shared Management System—data are collected from individual advisory committees, with government-wide and agency roll-up;
- The Secretariat administers an Advisory Committee Engagement Survey (ACES) every other year which measures the extent to which sponsoring agencies address factors that are critical to the success of advisory committees;
- The Secretariat chairs the Interagency Committee on Federal Advisory Committee Management which brings all CMOs together quarterly for discussions on FACA policy, best practices and compliance issues;
- The Secretariat conducts a FACA training course which addresses the following topics: FACA history, laws related to FACA, legal and other ethics issues, recordkeeping, committee operations, membership processes, public interactions, and the use of the Secretariat's Shared Management System.

Mr. Chairman, members of the committee, that concludes my prepared statement. I would be pleased to answer any questions you may have.

Chairman THOMPSON. Thank you very much.

I will start the questioning of our panel, to begin with.

Mr. Hoelscher, of the 29 advisory committees that are presently in the department, how many of them are functioning as of this date?

Mr. HOELSCHER. Thank you for that question, Mr. Chairman.

There are currently 27 chartered committees. The FACA database requires in the previous fiscal year that you report all of the FACA committees that are in existence, even the ones that were terminated in the previous fiscal year. So there are two examples of committees that we terminated in the last fiscal year that still show up in the database that are no longer chartered committees.

So the answer is, there are 27 chartered committees, active committees.

Chairman THOMPSON. And your testimony before us is that they all are functioning committees as of this date, the 27?

Mr. HOELSCHER. The 27, for the most part, they are all very active. There are very few examples of nonactivity.

The one example that I can think of, the Great Lakes Pilotage Advisory Committee, did not meet in the last fiscal year but just held a meeting yesterday. So they are now active and functioning.

Chairman THOMPSON. Mr. Flaak, help me out on this committee: Are you merely an advisor to governments who have advisory committees and provide training to those committees or staffs?

Mr. FLAAK. We do, really, quite a bit more than that, Mr. Chairman. Our role is to set the policy framework within which agencies operate their Federal advisory committees. The regulation, under 41 CFR, that implements the Federal Advisory Committee Act was written by my office, and we ensure that it is implemented equally all of the agencies in the executive branch. This is an executive branch rule, so—

Chairman THOMPSON. So what happens when an agency is out of compliance?

Mr. FLAAK. When an agency is out of compliance—for example, they don't charter committees on time, they operate committee without the chartering process, or they do other things that are not consistent with the act—and we notice it, we talk to the committee management officer about that.

FACA does not have any criminal prosecution requirements in it. It does not give us the hammer to tell agencies what to do. We work in a collegial environment and a collaborative environment with all of the committee management officers that we work with.

Chairman THOMPSON. So you really can't do anything.

Mr. FLAAK. We work with them on improving their processes. We set the standards for it. If they are in violation of the regulation, we use the shared management system, which we use to collect the data on advisory committees and provide guidance and training. Over the years, it has worked quite well.

Chairman THOMPSON. Well, let me get a little more specific. And I appreciate your comment.

Is your testimony that DHS's advisory committees, that 27 that we referred to earlier, they are all in compliance, as of this hearing?

Mr. FLAAK. Effectively, I would say they are in compliance.

There are so many small things that could happen with any given advisory committee to take them out of compliance. For example, they might not issue their Federal register notices for meetings in a timely manner. Those are small issues, but sometimes those happen.

Chairman THOMPSON. So, I guess my question is, are they in compliance, yes or no?

Mr. FLAAK. Yes.

Chairman THOMPSON. All right.

Mr. Hoelscher, let's take the Navigational Safety Advisory Council for example. I understand that council has only met four times in 20 years. Am I correct?

Mr. HOELSCHER. Mr. Chairman, I don't know the answer off the top of my head, but I would be willing to follow up to give you that

information. I don't think that sounds accurate, but I will look into that for you.

Chairman THOMPSON. So are councils or advisory committees required to meet annually?

Mr. HOELSCHER. That is correct, sir. The FACA requires that each committee meets at least once annually. And each charter spells out further requirements. Last year, fiscal year 2006, DHS held over 106 meetings throughout the fiscal year of all of its advisory committees.

Chairman THOMPSON. So, Mr. Flaak, if I did to you, "A committee met four times in 20 years," would that send a flag up to you?

Mr. FLAAK. Generally it does. If the committee does not meet frequently—first of all, committees are rechartered every 2 years. During the rechartering process, we evaluate whether or not the committee has been effective and whether it is needed or not. That is normally done at the agency level. We may opine to them about our views on it, but—

Chairman THOMPSON. So if I asked you to check the Navigational Safety Advisory Council for whether or not it was in compliance, would you get back to the committee?

Mr. FLAAK. Of course.

Chairman THOMPSON. Because I am concerned that somebody that might not meet but four times in 20 years would be in compliance based on the testimony of both of you all. And I am concerned.

Last question: OMB issued a letter requesting Federal departments and agencies promote diversity on advisory councils and committees. Keeping accurate records on diversity is part of that process. But, as I understand, the department does not request diversity information.

Mr. Hoelscher, is that correct?

Mr. HOELSCHER. The department, the main thing that we focus on, Mr. Chairman—and thank you for that question—is that we bring relevant professional perspective to the policy table, which is what FACA requires. At the end of the day, we need to bring people who have the relevant expertise to give the secretary sound advice.

Although we don't track the gender or ethnic information or information along those lines, we do bring in other diversity perspectives as well. We do have a policy that we try to maximize ethnic and gender diversity as much as possible, but we also look at things like geographic diversity. And we have 46 states represented in our advisory committee members.

Chairman THOMPSON. Do you think racial diversity on advisory committees is important?

Mr. HOELSCHER. That is something that we take very seriously, and we try to promote it as much as possible. Some of our committees ask minority associations for their suggestions for committee members. We ask members of Congress for suggestions of committee members.

I think a couple members of this committee provided very good suggestions for the National Advisory Council, FEMA's new advisory council. And so, we have added some very good membership on that newly created committee.

Chairman THOMPSON. Mr. Flaak, are you aware of whether or not diversity information is collected by other agencies?

Mr. FLAAK. I am aware that some agencies do collect that data. I spent 20 years as a DFO with the Environmental Protection Agency, and it was a matter of practice to incorporate diversity in all of our committees whenever possible.

But the overriding concern on most advisory committees under FACA is to ensure that you have the right breadth of expertise that serves the needs of the committee and its mission.

Secondary issues, such as diversity for gender, ethnic backgrounds, geographical diversity and other factors like that, are of secondary issue. They are not directly addressed—

Chairman THOMPSON. Why would you say they are secondary?

Mr. FLAAK. They are not addressed by FACA. And my role in dealing with Federal advisory committees is to ensure that they meet the requirements under the Federal Advisory Committee Act. It is silent on this issue.

Chairman THOMPSON. Well, if you were told that many of those advisory committees you have just alluded that were in compliance lacked diversity, what would your comment to that be?

Mr. FLAAK. Under FACA, it is not a requirement. It is a best practice. So we encourage committees to be properly balanced with regard to the expertise, and we suggest that agencies do their best to incorporate other factors as well.

But that is usually part of the agency's specific procedural requirements that we do not set the standards for.

Chairman THOMPSON. Well, I am out of time.

Ms. Sanchez?

Ms. SANCHEZ. Thank you, Mr. Chairman.

And I actually want to follow up, because I think this is a very important issue. And I don't know how we get to the crux of what I believe the chairman is talking about, but I know that he and I have discussed this and it is an important issue to us.

You see, homeland is a pretty interesting arena to be working in, you know. And I don't want to offend anybody, but it tends to be that there are a lot of anglo males in law enforcement, in the intelligence industry, et cetera. And so, when we look at the department and when we look at this real basic criteria of who is qualified or who has the special assets or the special skills to be in these jobs, we tend to see the same profile of person come through.

And we are concerned, in particular, not just because the United States is a diverse area and we want to see representation in the department and, by the way, in these types of committees, but because we need that diversification in order for us to have the language skills, the nuances when foreigners, let's say, who we tend to think are the ones who are coming to get us, if you will, that we need that special set of skills too.

So when we don't see it, we get concerned. And we certainly don't see it in the regular workforce of Homeland or the intelligence community. This is not the first time this has been brought up. I mean, Nancy Pelosi said to me several years ago when she was on the Intelligence Committee, "We have told them for 15 years to get something more reflective of what is going on in the real world." So we are concerned.

I am also concerned from the standpoint of these advisory committees where some may not think it is very important, but when we diversify those committees, we are also able to give them their resume-building, so when we are looking in the future for new political appointees or people to head up these areas, they will have some of that background that we so seriously lack, quite frankly, as a woman or as a Hispanic or as an African-American. There are a lot of people who tend not to look in that area.

So I think it is incredibly important. And I would like to see, actually, an accounting, Mr. Chairman, of these committees to see what type of diversity actually sits on these advisory committees for homeland security.

Chairman THOMPSON. If the gentlelady will yield?

Mr. Hoelscher, will you provide this committee with the racial diversity of those 27 advisory committees?

Mr. HOELSCHER. Thank you for the question. I will follow up, and, if appropriate, given privacy concerns, we will provide that information.

Ms. SANCHEZ. And, Mr. Chairman—

Chairman THOMPSON. What privacy concerns?

Mr. HOELSCHER. There may be some privacy issues. Some people do not like to report that information. I mean, currently we don't have a way to track that within the Department of Homeland Security.

Chairman THOMPSON. You mean to tell me—well—

Ms. SANCHEZ. We will work on it.

Chairman THOMPSON. That is right. You just get us what you can.

Mr. HOELSCHER. Yes, sir.

Ms. SANCHEZ. I would like to see it by gender too, if you will, Mr. Chairman.

Chairman THOMPSON. Can you do gender?

Mr. HOELSCHER. We will follow up on that, sir.

Ms. SANCHEZ. OK.

So I am assuming that there are people within the organization that are actually employees of the department, designated Federal officers who actually are sort of in charge of this advisory committee or whathaveyou. Now, depending on the size of the committee, this can be a real challenge to continue that committee, to make it meet, to hit the annual reporting, even just to get the membership of the committee.

Given that it is only a part of somebody's job, how much time do you think an individual is spending if they are sort of in charge of one of these committees?

Maybe Mr. Hoelscher?

Mr. HOELSCHER. All right. Thank you, ma'am.

It varies from the committee to committee. For example, some of the very regional committees may have only a very small fraction of their time being focused on committee work. And some committees may have a couple staffers or more working on the committee. So it really varies by the scope of the committee.

The good thing about the FACA database is that it accurately reports that information on how much staff time is going into each committee.

Ms. SANCHEZ. And how much training do these people, these DFOs who are in charge of these committees, how much training do they get to understand where they are going to get people, diversification of those resumes, et cetera, following the rules? Do we have a training program for them?

Mr. HOELSCHER. That is a good question, and it is very important so folks can actually do their job.

The first thing that happens is we connect new DFOs with the GSA program—and I would yield to Bob to talk a little bit more about their training efforts—to make sure that they have that opportunity to get trained from the GSA best-practices perspective.

Our committee management office also sits down with each new DFO to go over things that they need to be keeping an eye on, to go over best practices, to go over key documents that are relevant to their work. And so, those two things.

And then, in the last year and a half since I came into this job, we have really increased the amount of communication that we have with our DFOs. We now talk regularly with them via conference calls to share best practices and concerns so we can better serve them and support them in their activities. And, like I mentioned in my testimony, we will be holding a best-practices in-person meeting this fall.

Ms. SANCHEZ. I would like to hear from Mr. Flaak, but let me sort of get something clarified.

Would a DFO have other responsibilities, or are they just geared to making sure whatever committee or committees they are in charge of keep going?

Mr. HOELSCHER. The answer is, it depends on the committee.

For example, the National Infrastructure Advisory Council, one of our presidential committees, the designated Federal officer there is an assistant secretary. It is the secretary Bob Stephan. So obviously he has a lot of other responsibilities in addition to those responsibilities. But he has staff who work for him who focus on the committee as well.

Some of the more focused regional committees, like the Houston/Galveston Navigation Safety Advisory Committee, they are more focused and only have a fraction of the staff time, and they focus on other activities, just because the need isn't there for a full-time staff person.

Ms. SANCHEZ. Mr. Flaak, you were going to comment on the training?

Mr. FLAAK. Yes. Thank you, Congresswoman.

I mentioned earlier we do have a training program. It has been in existence since 1989. We teach continuously every year, five to six times in the Washington, D.C., area, and tailored courses are given to agencies at their request in the field, such as CDC or Fish and Wildlife Service and others out west.

The purpose of that course is to train up individuals who are FACA professionals on the duties of the job. And it includes people who are DFOs, people who are committee management officers, attorneys, FACA administrative support staff and others that deal with records and such.

Typically, 50 to 60 people attend each class. The classes are taught by subject-matter experts from agencies, including EPA,

DOI, DOJ, Office of Government Ethics, DOD and others, who come in and provide their expertise on how to run advisory committees, the various aspects of it. I have been an instructor with a class since 1989 or 1990, and I have taught over 6,000 Federal employees how to run advisory committees.

So it is a very effective program, but it is the only real, formal program that DFOs can take to learn how to do that kind of work. And some agencies, such as DHS and others, are developing some form of training, whether it is through direct confrontations with the committee management officer to give them the information they need—and there are a few agencies that are actually doing a small, formal training program.

I do have an interagency committee that I set up in 2006 that is looking at that right now. And as we get more information on that, if you would like, I would be happy to share that with you.

Ms. SANCHEZ. Great.

Thank you, Mr. Chairman. I appreciate the time.

Chairman THOMPSON. Thank you very much.

We now yield to the gentlelady from the Virgin Islands, Mrs. Christensen.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman.

I may have missed it, but how many of the committees and councils have been eliminated?

Mr. HOELSCHER. When the department first stood up, we made one committee administratively inactive. It is a statutory committee, so it would take congressional action to get rid of it. And since the department has stood up, we have gotten rid of four of our FACA committees.

Mrs. CHRISTENSEN. And so, you have determined that there is no overlap and that the others are still needed, I assume. Although they came from so many different agencies, and some of the agencies are now working together on different issues, you don't see the need to eliminate any more?

Mr. HOELSCHER. You know, that is a good question. It is something that we take very seriously, not only in our conversations about having new committees started, but the example of the COBRA Fees Advisory Committee is an example of a committee that was established, came into the department; there was another committee that was serving a very similar role. We consolidated the activities of those committees into one.

Those both happened to be statutory committees, so to technically get rid of the committee, it would take congressional action.

But we do take that very seriously.

Mrs. CHRISTENSEN. OK.

And the committee, in reviewing the Federal advisory committees, the DHS found that they don't really have a standard operating procedure or uniform criteria for Federal advisory committees to report information.

Are there plans for an updated management directive to establish policies, assign responsibilities, prescribe procedures?

Mr. HOELSCHER. Thank you for the question. It provides an opportunity to highlight some things we have done recently and some things we have planned in the future.

We have standardized a lot of key documents that have helped increase the efficiency of our committee actions, including standardizing charter actions, making sure that we have clarified reps and new members or special government employees and making that clear in each membership package, clarified and standardized membership packages, when they go up from the component head to the secretary.

We have some things that will really help cement a foundation for the long term: things like the Revised Management Directive, which will clarify roles and responsibilities of not only designated Federal officers but the committee management office, those of GSA, but also those of the principals within the department, the individuals that the committees report to. For example, the Homeland Security Advisory Council reports to Secretary Chertoff.

So that is one example of something we had planned. But we also are planning an Internet site, where we have all the key documents located, where they are easily accessible by the designated Federal officers to be a really easy tool for them to do their jobs.

I really view my role as to help the designated Federal officers do their jobs and to support them and make it easier for them to move things forward.

Mrs. CHRISTENSEN. Does GSA have a role in that?

Mr. HOELSCHER. GSA does have a role in improving things, and I would yield to Mr. Flaak on that.

Mr. FLAAK. We have a role in providing that oversight. But the development of individual policies and procedures by agencies is done at the agency level.

We are aware that DHS has prepared a draft and are moving toward completion of a document. We have looked at it; it looks quite good, actually.

Not all of the agencies have a proactive approach to doing this, and it is a slow process to get them to do it.

Mrs. CHRISTENSEN. Thank you.

Mr. Chairman, I also share the concerns that you and Congresswoman Sanchez raised about diversity, especially since we don't see much diversity in the department. It is really critical that that change, but also that the committees reflect the diversity of our country in all of its different ways.

So thank you. I have no further questions.

Chairman THOMPSON. Thank you very much, Dr. Christensen. And I assure you, we will look forward to the receipt of the information.

One last question, Mr. Hoelscher. I am told by staff that when they met with your staff in May, they were told that only recently had you started to track, record, review and implement advisory committee recommendations. Is that statement true?

Mr. HOELSCHER. It is partially true. We take the recommendations very seriously, and each designated Federal officer is responsible for tracking the recommendations and following up on their implementation. And if you look overall, the majority of recommendations within the department, I think it is safe to say, are implemented.

For example, the Homeland Security Advisory Committee, we have had 175 recommendations to the department since the com-

mittee was established. One-hundred-and-thirty-five of those are applicable to the department, so there are 40 that are applicable to our partners or other parts of the government. Of those 135, 56 percent have been implemented or are in the process of being implemented; 34 percent have been partially implemented; and only 10 percent have not been implemented. So I think that is a good example showing how things have been implemented.

Would you be willing to repeat the other part of your question, sir?

Chairman THOMPSON. Well, all you would need to do is just give me the same statistics for the other 26, and I will be perfectly happy just to see that.

Mr. HOELSCHER. OK. I don't have those off the top of my head, sir, but we will follow up with that information.

Chairman THOMPSON. Thank you very much.

Mr. Davis, would you want to ask some questions?

Mr. DAVIS of Tennessee. Please.

Chairman THOMPSON. Mr. Davis of Tennessee for 5 minutes.

Mr. DAVIS of Tennessee. Thank you, Mr. Chairman.

And thank you, gentlemen, for being with us today.

We will start with Mr. Hoelscher.

Could you explain to me the extent that the different responsibilities are for the various Dos, and how the responsibilities vary amongst the committees?

Mr. HOELSCHER. You know, that is a good question. From a E HUNFACA-compliance perspective, things are very constant, and each designated Federal officer needs to complete all the requirements of FACA. From a policy perspective, there is great variance. And therefore, that is where there is divergence in responsibilities.

From a policy perspective, if you look at our list of advisory committees, you will see a very diverse group of bodies that focuses on things from navigation in specific ports to very broad policy issues that are tackled by the Homeland Security Advisory Council.

And that is one reason why I think it is very important to keep the accountability at the designated Federal officer level, because they know their committee members best, they know the policy issues and intricacies best, and they can best track and provide input in a way that the committee members are looking for on their recommendations.

Mr. DAVIS of Tennessee. Could you tell me what training is provided to DFOs to ensure that they fully understand and meet their responsibilities in staffing the advisory committees?

Mr. HOELSCHER. That is a good question, and I appreciate the opportunity to discuss that.

There are several layers that are involved in our training efforts. First of all, GSA has a very good program for new designated Federal officers. And we make sure that our new designated Federal officers are aware of that training and get looped in there.

second, our committee management office sits down with our new designated Federal officers when they come on to the job to go over what are their key responsibilities, clarify key processes, go over key documents, and share some best practices as well, so they can really hit the ground running from day one.

And we have also increased communication with our advisory committee members, as well, and with our DFOs—more regular meetings. And that allows us to share best practices more regularly.

Mr. DAVIS of Tennessee. Is that training and communication then reflected in their performance appraisals? And, if so, how?

Mr. HOELSCHER. The training itself, I don't think it is in the performance appraisal, sir. But we took action recently to clarify the responsibilities of the designated Federal officer, the core responsibilities. As you are well aware, we can't fit everything into the appraisal plan, but we do make sure that we have the core responsibilities.

And we recently worked with our personnel shop to make sure that it was clarified with DFOs and their supervisors that they really need to be capturing—and I think, for the most part, that this was happening before, but we wanted to take the extra effort to make sure that they were capturing the core responsibilities of DFO activities in their appraisal plans and encouraged them to take concrete steps to move forward there.

Mr. DAVIS of Tennessee. Do you believe that the supervisors of DFOs have sufficient knowledge and understanding of the DFOs' roles?

Mr. HOELSCHER. That is a good question.

I think a couple things will or have helped. One is the recent action we took, in the form of a memo, to clarify the DFO roles. That was distributed to the DFOs' supervisors. And I think the management directive that we are working on revising will really help clarify those roles and the key processes within the department and help elevate the prominence of the advisory committees by holding accountable the principles to which the committees report as well.

For example, in the National Security Telecommunications Advisory Committee, another one of our presidential committees, that committee reports to the undersecretary for the National Programs and Plans Directorate. So it clarifies those sort of relationships as well.

Mr. DAVIS of Tennessee. So you are taking some action to strengthen the actual management structure?

Mr. HOELSCHER. Definitely. Definitely.

Mr. DAVIS of Tennessee. OK.

Mr. Flaak, if I could just ask you a question. My time is limited. The secretariat conducts a FACA training course. Could you explain that course a little bit for me?

Mr. FLAAK. Yes, Congressman. The course is offered, as I have mentioned before, a couple of times a year, about five times a year. It is a very intense course that covers 2 days.

And it covers legal aspects of FACA, some historical aspects. We cover ethics for Federal employees and for advisory committee members, particularly special government employees on advisory committees. We cover Federal record-keeping. We cover operations of advisory committees. We cover the chartering function to charter these advisory committees, and a variety of other issues that are relevant for DFOs and other related FACA professionals to know and understand.

Most of the people who take the course have indicated it is one of the best Federal training courses they have ever taken. And this is pretty consistent in our evaluation reports.

You would think that, after doing this for about 18 years, that we would run out of students, but we practically beat them off with a stick every time we have a class. We have a class coming up in a couple weeks, and it is almost full already, and that is unusual for the summertime.

Mr. DAVIS of Tennessee. Thank you for your candidness.

And I yield back.

Chairman THOMPSON. Thank you very much.

We will now hear from the gentleman from North Carolina for 5 minutes.

Mr. ETHERIDGE. Thank you, Mr. Chairman, and thank you for holding this hearing.

And, gentlemen, let me thank you for being here this morning.

My notes indicate that the department—you know, we can get advisory committees by the president appointing them by executive order; the Congress creating more; in some cases, department heads through independent advice. And I think you have already indicated that in the Department of Homeland Security, there are roughly 29 Federal advisory committees, 19 subcommittees, for a total of about 33-plus efforts, to the tune of about \$8.5 million in the 2007 fiscal year.

I was reading in Ms. Weismann's testimony—it will come later—indicating that the Federal advisory committees are often established to rubberstamp predetermined decisions and that departments oftentimes pay much less attention to these recommendations that truly originated from the committees themselves within the agencies.

So my question to you is, do you think this is a fair characterization? Number two, what do you think is the balance in information from the advisory committees between the original recommendations and reviewing the decisions that have already been made within the department from the information they have?

Do you understand the question?

Mr. HOELSCHER. I will take a cut at it, sir, from the DHS perspective, and I am sure Bob could add from the government overall.

I think this is a good example of where the criticisms can cut two ways on advisory committees. I don't think the characterization that the committees are a rubberstamp is accurate at all. And the fact that the department chooses not to implement certain recommendations demonstrates that fact.

Also I think it is important—and Bob can talk a little bit more about it—but these are government entities, and it is important that the departments and agencies set the agenda, they ask the specific questions of what the committees are going to focus on, but the committees then need to have the latitude to come up with independent and inquisitive advice. And I think that, in every case in the Department of Homeland Security, that has been the case. On the Homeland Security Advisory Council, they have tackled very tough issues and put forward very good recommendations and have given sound advice to the secretary.

Mr. ETHERIDGE. Wouldn't that depend on the people you put on those committees, whether or not they have expertise in the area in which you operate?

Mr. HOELSCHER. That would be one of the foundations. And I think that is the main thing, not the only thing, but the main thing that we focus on when we are staffing these committees is: Are we getting people who bring the relevant professional perspectives and the relevant expertise to the table so that the leadership gets good advice?

Mr. FLAAK. I would agree that—and when you look across the government, one of the keystones of having a good advisory committee is excellence in the membership and ensuring that you have the right viewpoints, the appropriate expertise to provide the information that the agency is requesting, and the appropriate diversity on the committee to ensure that all viewpoints are being represented.

Particularly, as you get into some areas of the country, it is important to have much more diversity than others, because the needs of some of the committees—I know at EPA we had a lot of committees dealing with environmental justice, and those committees looked at the disproportionate impact of environmental issues in the inner-city areas. And those committees, very appropriately, were staffed in different ways, sometimes, than some of the other committees were.

One of the difficulties I always ran into as a designated Federal officer in setting up advisory committees and helping to recruit the people for them was finding the best people who were available at the time we needed them. And it is not an easy task, if you are a DFO, to do that.

The thing to remember about advisory committees is that they are a creature of the agency. They are the agency's issue, and the people who serve on them serve that agency.

Mr. ETHERIDGE. In that regard, then, let me ask this question, because Congress approved, with Homeland Security's recommendations, a whole lot of work as it relates to passports. So my question is this: I guess I would want to know, in what way do advisory committees enhance homeland security?

It seems to me, if you have got all this stuff with passports, that we have had a huge debacle between agencies. If you had had someone out there that you are listening to that understood the problem, instead of people behind a desk who didn't understand it, we wouldn't have the huge debacle we have got.

And I would appreciate your comments on that.

Mr. HOELSCHER. I will take a cut at it from the DHS perspective.

I think there are a lot of examples, sir, of advisory committees adding value to the department.

For example, the Homeland Security Advisory Council, we have a subcommittee that focuses on secure borders and open trade, hitting some of your concerns, focusing on: How can we maintain security but also enhance the effectiveness of our security programs to increase the welcoming nature of our government when folks come to visit for tourism or for business or for academic reasons?

And so, we created a subcommittee of the Homeland Security Advisory Committee just to focus on that. We have relevant individ-

uals from across the government, from across the private sector, in academic, and health-care partners who are volunteering their time to give us advice. And I think recommendations will come later this year.

The committee is being chaired by Dr. Jared Cohon from Carnegie Mellon and Mr. John Chen from Sybase.

Mr. ETHERIDGE. I appreciate the answer, but I don't think it was to the question I asked.

Mr. HOELSCHER. Would you be willing to clarify, sir, and I can maybe follow up?

Mr. ETHERIDGE. Yes, because I asked the question as related to passports, which dealt, by and large, with American citizens who want to travel. And it inundated every congressional office on the Hill and required the administration, as well as Congress, to extend the deadlines.

Mr. HOELSCHER. I don't know if the Department of State has an advisory committee on passports, but maybe something that—

Mr. ETHERIDGE. Well, but it is bigger than that, because it is a joint deal between Homeland Security, who has the enforcement arm—and apparently the enforcement arm wasn't talking to the authorizing arm. Which means the right hand was going this way and the left was going this way, and they never got together to get it fixed.

Mr. HOELSCHER. It is definitely an example of where things can be improved. And, again, I don't know, sir—

Mr. ETHERIDGE. We do have telephones up on this Hill.

[Laughter.]

I believe we still operate telephones and fax machines.

[Laughter.]

Thank you, Mr. Chairman. I yield back.

Chairman THOMPSON. Thank you very much.

And I yield to the gentleman from Washington, Mr. Reichert, for 5 minutes.

Mr. REICHERT. Thank you, Mr. Chairman.

Mr. Hoelscher, you don't have line authority over designated Federal officials in the DHS component agencies. Would that make your job easier, if you did have line authority?

Mr. HOELSCHER. Thank you, Congressman, for the question.

You know, I don't think so. And for the following reasons, I don't think that is the right way to go.

First of all, it would ultimately lower the level of the designated Federal officers. For example, we currently have some assistant secretaries and undersecretaries who are designated Federal officers for a couple of our committees.

second, I think it is important to hold people accountable, and I think it is important that as much of that is kept at the lowest level possible—in this case, the designated Federal officer—who knows the committees the best, their members the best. They know the policy intricacies the best, as well. And so, I don't think that would help improve the management of the committees.

Mr. REICHERT. Mr. Flaak, do you have an opinion on that?

Mr. FLAAK. I would agree.

It is difficult for a DFO to be reporting to multiple masters sometimes, too. In many cases, the DFO in an agency is doing this as

a collateral duty. They have some real job they do in that agency, and being DFO for a committee just happens to be an extra duty they get assigned. And I see a lot of that. There are agencies who have full-time DFOs, and I can tell you, it is a full-time job, to do it well.

But for the committee management office in the agency to have line authority over those DFOs means having line authority over people that are spread across the entire agency, sometimes in the regional and field offices. I don't think it is an effective way to manage this.

I do think it is more effective, though, to have performance measures in those DFOs' job descriptions, because it helps the agency manage this better. And I can tell you that it is useful to have a 360-degree evaluation for individuals to look at. And Doug and I have had this conversation before, before this hearing even came up, about that sort of issue and in looking at the work of individuals who we all work with.

Mr. REICHERT. Do performance measures and evaluations currently exist in the system?

Mr. FLAAK. To my knowledge, if they do, they are pretty limited. It is not an area that we track. Although we are interested in seeing that they get developed across the government.

Mr. REICHERT. So there is work now being done on at least examining—

Mr. FLAAK. It is on our list of issues to deal with over the next several years. The problem is, I have a staff of six people, so it is a little bit hard to do all of this at once.

Mr. REICHERT. So that would be my next question for both of you.

Mr. FLAAK. Good lead-in.

[Laughter.]

Mr. REICHERT. Yes.

Mr. Hoelscher, in your statement, you say that you have two full-time people. Is that enough for you?

And then, Mr. Flaak, you have already said that you don't have enough staff. How many would be enough? How many people do you need to do your job?

Mr. HOELSCHER. You know, sir, given the requirements of FACA, I think our staffing level right now is at the appropriate level. And I think it is very much in line with where it is at in other departments throughout the Federal Government for departments that have a similar number of FACA committees.

Mr. FLAAK. I think at the different agencies, the grade level for committee management officers ranges across the map from around a GS-12 up to SES. And there is really no real correlation to the number of committees or the size of the agency. It is just historically how that agency had it set up, and it has kind of worked that way. Committee numbers change over time.

For my staff, we do an effective job of providing oversight. I probably could use one or two more people to do some of these initiatives.

Mr. REICHERT. Mr. Hoelscher, you wouldn't turn down an extra employee, would you?

[Laughter.]

Mr. HOELSCHER. Probably not, sir.

[Laughter.]

Mr. REICHERT. I yield back. Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much.

We will now hear from the gentleman from Texas, Mr. Cuellar, for 5 minutes.

Mr. CUELLAR. Thank you, Mr. Chairman.

And, again, thank you for being here.

Just to follow up on some of the questions that have been asked, I think it is, as you know, very important that the set-up of the structure of the advisory committee and how it is integrated, like you said, making sure we have the right expertise and all that, is important.

My question is a follow-up. My understanding is that each of the advisory committees is housed within the component agency and reports to the head of that agency. Is that correct?

Mr. HOELSCHER. Within DHS.

Mr. CUELLAR. Yes, right.

Mr. HOELSCHER. Yes, it varies within—it reports to the appropriate person within the component, within that policy area.

Mr. CUELLAR. And, as you know, we have added different agencies under Homeland Security. By having that type of arrangement, how does that help you all with transformation and integration efforts, that Homeland is trying to do that? I mean, is that a system that works?

Mr. HOELSCHER. That is a good question. And one of the main reasons, or an important reason, that DHS stood up, as you well know, is to better leverage all the Federal resources to better secure the homeland.

I think one example of an area where we minimized duplication of our committees: When the department first stood up, we identified two committees that were duplicative or very close in their mission, and we made one administratively inactive. And that takes congressional action to get rid of the committee, technically. And that is one area where I would encourage the Congress to look at, to get rid of the COBRA Fees Advisory Committee, because we have another committee that is doing the functions of that committee.

I think, similarly along those lines, whenever there is talk of a new advisory committee being stood up, we really take a step back and say, "Is this necessary? Are there other avenues that we can take to get similar advice that is going to be at a lower cost?" And only when those answers are answered in a way where it is necessary do we actually take action to establish them.

Mr. CUELLAR. OK.

Could I ask both of you all, if you could provide this to the chairman, if you can give us what we need to streamline—I know you have got to go through your own process before you give us this info. But one is streamline; what advisory committees you feel might not be necessary at this time.

And then if there is a way that we can structure this. Because, I mean, you should have the advisory committees, but if they are all within the same agency, I mean, is that the best format, is that the best structure to have, to help you get new ideas and new blood

into the ideas to continue the integration and the transformation of homeland security?

So I would appreciate the same thing with GSA, if you all could give us any suggestions, we would appreciate that, if you could submit that to the chairman.

Thank you.

Thank you, Mr. Chairman. I yield back the remaining balance of my time.

Chairman THOMPSON. Thank you very much.

That concludes the questions of the committee—

Mr. SHAYS. Could I just ask one question?

Chairman THOMPSON. Yes.

Mr. SHAYS. As I am sitting here, I am just trying to grasp the significance of having people's names be known on advisory committees. And in one sense, I could understand that we would not want to make such a big deal that these individuals then become a conduit for others who then seek them out and act as if they could then become the lobbyist for their position. But on the other hand, I sense the need of people's right to know and to make sure, as the committee was concerned, that these individuals not have their own agenda in a way that would pervert the mission of the Department of Homeland Security.

And this has been addressed, in a way, but I would like you just to kind of articulate it again how you sort that out.

Mr. FLAAK. Right now, membership on Federal advisory committees stands at about 65,000 across the government. Those members, of course, change year to year. Some of them are special government employees, and they are subject to the same ethics rules and requirements that I am as a Federal employee. So when they serve on committees, they have to follow ethics rules and requirements.

Naming the individuals is not an unusual thing. It is included in our shared management system. It is available to the public and anyone who wishes to see the names of people who serve on the different committees. If you were to attend an advisory committee meeting, you would find the roster of that committee there anyway. So that information is going to be public.

What stops people from lobbying committee members? Frankly, not a whole lot. You can advise committee members and train them a bit. We used to do that, to advise them that, "Look, you don't talk to people about these things. And if someone persists, you tell your DFO, and the DFO will deal with it in some manner."

So it is not a perfect world, but it tends to work pretty well. And with good training and collaboration, we achieve pretty good compliance.

Mr. HOELSCHER. And, sir, if I could add to that from the DHS perspective, I think there are two things that we do.

First of all is to make sure we have broad perspectives and there are broad professional perspectives on each committee. That is the first step, so there are counterbalancing views and different perspectives that come to the table.

And I think there is also, most of our committees don't get in the territory of particular matters. And so, on the Homeland Security

Advisory Council, we don't get into issues of contracts or very particular matters. And so, that helps us steer clear of those things.

Mr. SHAYS. Let me just respond to that. I think it does to a degree, but if an advisory committee is recommending you head in a certain direction where only certain vendors ultimately can be players, they can do it in an indirect way. Correct?

Mr. HOELSCHER. I am not aware of any examples of that happening from the advisory committees that I oversee. But I suppose, in a hypothetical, it could be possible, sir.

Mr. SHAYS. OK. Thank you.

Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much.

Let me thank our first panel of witnesses for their testimony, as well as their answers to the questions. I will remind you that there is some follow-up information that the committee will need. Thank you very much for your testimony before the committee this morning.

Mr. FLAAK. My pleasure, Mr. Chairman. Thank you.

Mr. HOELSCHER. Thank you.

Chairman THOMPSON. We would like to call our second panel of witnesses, please.

Let me welcome our second panel of witnesses to this hearing this morning.

I will introduce them as they are seated: Mr. Jeff Gaynor, former director of DHS Homeland Security Advisory Council, Emergency Response Senior Advisory Committee and Critical Infrastructure Task Force; Mr. Randy Beardsworth, who is a former DHS assistant secretary for strategic plans; Ms. Anne Weismann, chief counsel, Citizens for Responsibility and Ethics in Government; Mr. Alfred Berkeley, member of the DHS National Infrastructure Advisory Committee.

We would like to welcome all of you to the hearing this morning.

As you know, the procedure here is that we have received your written testimony, and we would ask you to summarize your written testimony in 5 minutes for the committee, beginning with Mr. Gaynor.

STATEMENT OF JEFF GAYNOR, FORMER DIRECTOR, EMERGENCY RESPONSE ADVISORY COMMITTEE, CRITICAL INFRASTRUCTURE TASK FORCE

Mr. GAYNOR. Thank you, Mr. Chairman, distinguished members of the committee. I am proud to be before you today to urge full empowerment of the Homeland Security Advisory Council.

At the secretary's direction, the HSAC has provided visionary, bold and actionable recommendations. Because of time limitations today, I would like to focus on the principal recommendations in just two of the HSAC's reports to justify my recommendation to you.

The first recommendation I wish to discuss is in the Private-Sector Information-Sharing Task Force report. It is the principal recommendation.

Because the number of Homeland Security information reports produced is not a valid metric of their value in securing the homeland and because we are in this fight with terrorism as a nation,

the principal recommendation of the task force was the creation of a formal, private-sector homeland security information requirements process—quite simply, the ability for a high-consequence, private-sector entity or corporation to ask a homeland security-related question and get an answer.

Despite the HSAC recommendation and nearly 2 years of information-sharing activity since, the requirements process still does not exist.

I recognize that government can never have all the answers, but what is bothersome is that we don't even have all the questions. It is impossible to connect dots that are not visible.

The second recommendation I want to address is the principal recommendation of the Critical Infrastructure Task Force.

Upon his arrival at the department, Secretary Chertoff directed the HSAC to provide recommendation to advance critical-infrastructure policy and planning. On January 10, 2006, the Critical Infrastructure Task Force, before a gallery of hundreds, publicly recommended the secretary promulgate critical-infrastructure resilience as the top-level strategic objective, the desired outcome to drive national policy and planning.

After better than 19 months, I have been told that the department will soon be providing an explanation for its critical-infrastructure policy. If that explanation meets the secretary's charge for the task force and provides objectively measurable, manageable and sustainable critical infrastructure and a national preparedness standard that advances business continuity, supports corporate implementation of the Sarbanes–Oxley Act provisions, provides for objectively measurable Terrorism Risk Insurance Act standards, was built from the point where all consequences are felt rather than directed through sector stovepipes, and the Federal Government is backed by local and regional authorities and Fortune 500 companies, the Infrastructure Security Partnership and the Council on Competitiveness, as resilience has been backed, if it provides the opportunity for scalable investment to reverse the consequence-amplifying condition of America's aging and exploitable critical infrastructure, and in an all-hazards environment builds a safer, stronger and better nation, the private sector will be onboard.

Mr. Chairman, I am pleased to hear the progress being made on HSAC recommendations and applaud Mr. Hoelscher and the staff. However, my experience leads me to President Reagan's maxim: Trust, but verify.

To that end, and consistent with your oversight responsibilities and the positive process-accelerating impact of this hearing, I recommend a congressional reporting requirement. The report would detail public recommendations made by the HSAC, the actions taken on them, recommendations not acted upon, and why, and by whose authority.

In closing, and at the risk of demonstrating a solid grip on the obvious, let me emphasize that we are in this fight with a morally inferior cause and people who are unfortunately creative, agile, adaptive, dedicated, patient, self-sacrificing, and already in or en route or near the homeland. Our adversaries have proven themselves effective at inflicting their godless acts.

Thus, we need every asset at our disposal fully engaged in this fight for our existence. The HSAC, composed of dedicated, visionary, incredibly smart and successful people, from the spectrum of American society and political persuasion, is a repeatedly proven and, I am convinced, vital resource in this fight, and must be fully empowered.

From my new perspective in the private sector, I can assure the committee the HSAC recommendations resonate and have traction in it. Thus, in the wake of the next catastrophe resulting from the failure of information-sharing or infrastructure protection, there will be no logical explanation for failure to implement to them.

Mr. Chairman, I, again, thank you and the entire committee for the opportunity to be here before you on this most fundamental of homeland security issues. After 43 years of Federal service, it is difficult to stop working in the public interest, and I do not intend to do so. In whatever capacity I may, I am at your and the department's service.

And I look forward to your questions, Mr. Chairman. Thank you.
[The statement of Mr. Gaynor follows:]

PREPARED STATEMENT OF JEFFREY R. GAYNOR

Machiavelli said: "There is nothing more difficult to take in hand, more perilous to conduct, or more uncertain in its success than to take the lead in the introduction of a new order of things, because the innovator has for enemies all those who have done well under the old condition, and lukewarm defenders in those who may do well under the new."

Charles Darwin noted: "*It is not the strongest of the species that survive or the most intelligent, but the ones that are most responsive to change.*"

And President Woodrow Wilson—in true American style said: "*If you want to make enemies, try to change something.*"

Mr. Chairman and members of the House Committee on Homeland Security, with those words as a preamble, it is a my distinct honor and privilege to provide this statement and to appear before you this day to discuss—and far-more importantly—to find immediate and objectively measurable solutions to fully optimize an organization that in my opinion is nothing short of a national treasure. I speak of the Homeland Security Advisory Council and its Senior Advisory Committees of the U.S. Department of Homeland Security.

In the wake of the nationally transforming events of September 11, 2001, President Bush created the Office of Homeland Security. On October 8, 2001, Governor Tom Ridge became America's first Homeland Security Advisor. Given both the President's and Governor Ridge's experience as state leaders and recognizing that Washington cannot and will never have the real-time understanding of the realities of life in our hometowns—a knowledge that is routinely possessed and used daily by their citizens, business owners, elected and appointed officials, and Emergency Responders—President Bush ordered the creation of the Homeland Security Advisory Council or HSAC and directed it be populated by people who could provide to Washington that understanding. Under the leadership of Governor, Homeland Security Advisor, and then Secretary Tom Ridge, the HSAC—as the President intended—became the Nation's principal Homeland Security Advisory Body.

True to its Charter, the members of the HSAC and its Emergency Response, State and Local Officials, Private Sector and Academe and Policy Research Senior Advisory Committees, have leveraged their unique experience and have provided to the Secretary organizationally independent, visionary, non-partisan, and highly-executable recommendations spanning the spectrum of Homeland Security policy, planning, programs and capability creation. All of the HSAC products including the Task Force Reports and recommendations I will address are publicly available at www.dhs.gov/hsac.

In 43 years of Defense and Civil Service, I have had the honor to serve with some of the most patriotic, caring, selflessly committed, innovative, courageous, intelligent, and far beyond intelligent—smartest people on the planet. I count every member of the Homeland Security Advisory Council and its Senior Advisory Committees squarely in that group. My association with them was inspirational and

both a personal and professional learning and growing experience. Prior to my retirement from government service, I served as the HSAC's Director of both its Emergency Response Senior Advisory Committee and its Critical Infrastructure Task Force and actively participated in the efforts of the Private Sector Information Sharing and Culture Task Forces. I am convinced that their recommendations deserve full and objective consideration and implementation. Unfortunately, over the past couple of years they have effectively received little of either.

In an effort to further validate the value of the HSAC's recommendations and to correct a situation I believe endangers national security, I will cite three examples of HSAC recommendations, the responses to them, and provide a recommendation that relies on objective metrics to correct the situation.

Example One: Private Sector Information Sharing Task Force Report

History is replete with the failures of vision and intelligence and resulting misdirected human action and grave consequence. To the extent this Nation is capable, it must leverage all of its resources to prevent or at least minimize the consequences of any failure of intelligence or understanding. Among other issues that the Private Sector Information Sharing Task Force report focused upon was requirements-based information sharing. Its highest priority recommendation was its first: "DHS and the Private Sector should work in collaboration to develop a formal and objectively manageable, homeland security intelligence/information process." The Task Force quite simply, was recommending DHS create the capability for its private sector stakeholders to ask a question and receive an answer. The recommendation was in part designed to assure that the value and success of Homeland Security information reporting is not measured simply by the number of reports generated, but rather, is the product of the assessments of the department's Homeland Security Partners/customers and responsive to the homeland security information requirements of high-consequence enterprises of the private sector and the high consequence critical infrastructure service providers that empower them and the Nation.

From the corporate view, requirements based information sharing is designed to address business resilience issues including "the delta" between infrastructure capabilities and the corporations' need for—beyond protected—operationally resilient critical infrastructure and global supply chain operation. To that end, and after my departure from the Department, I helped coordinate two meetings that were designed to demonstrate to the Department corporate willingness to support requirements-based information sharing.

In December 2006, Terry Tapley, the Chief Information Security Officer of a national icon—McDonalds, hosted a meeting of Fortune 500 companies. In addition to McDonalds, attendees included representatives of: the Boeing Corporation, Ford Motor Corporation, General Motors Corporation, Cardinal Health, The Bank of Montreal, J.P. Morgan/Chase, Target, Limited Brands, National City Bank, Wal-Mart, Metavante, McCormick Place, American Association of Railroads, Canadian National Rail, Pace Bus, AON Insurance, Progressive Insurance, TIBCO, Affiliated Computer Services, Waste Management, Illitch Holdings, Nationwide Insurance, and Computer Network Services. Also attending were representatives of the States of Illinois and Ohio.

In the presence of Homeland Security Officials from the Information and Analysis and Infrastructure Protection organizations and the Private Sector Office, these corporations, consistent with information sharing recommendations made by the HSAC (in its Private Sector Information Sharing and Critical Infrastructure Task Force Reports), agreed to participate in Fusion Center development and requirements-based information sharing efforts. Another meeting in Columbus, Ohio in January of this year yielded the same results—corporate willingness to support Homeland Security requirements-based information sharing efforts through the emerging fusion centers. At both meetings, the corporations urged expeditious action to that end on the part of DHS.

These companies—like emergency responders and state and local officials—require the ability to ask questions and receive timely, accurate and actionable answers to drive investment and actions to maximize their all-hazards preparedness. A number of these companies are subject to Sarbanes-Oxley provisions and have a stake in Terrorism Risk Insurance Act issues. Of significance, some of these companies are also involved with current preparation of the City of Chicago's Olympic Bid for the 2016 Games with host city to be selected 2009. If Chicago is selected, the 2016 Olympics will become the single most challenging National Security Special Event since 9/11.

For all of the above reasons, I believe American corporations are prepared to invest in "Due Care" efforts designed to ensure their competitiveness and economic viability in a 21st Century, globally interconnected and "all-hazards" marketplace.

Because of the reality of interdependence, corporate investment in their infrastructure fosters improvement in the resilience of critical infrastructure in the cities and regions in which they operate. However, to justify such expenditures, these entities need timely, actionable information that thus far (and quite inexplicably) has not been made available to them.

The reasons for the subsequent withdrawal of DHS support from a continuation of these meetings appear to be tied to “organizational equities” and overheard statements indicating the need to “control” the private sector’s apparent thirst for requirements-based, timely, accurate, actionable and frequently updated Homeland Security Information. The corporate representatives attending the meetings in Chicago and Columbus, Ohio, like the members of the HSAC, understand objective measures of performance.

As businessmen and stakeholders in America’s security, they recognize the quality and effectiveness of any product—in this case Homeland Security Information reporting—is most appropriately judged by its customers. At this point in time, even though the Government may be unable to answer industry’s questions/requirements, just having them makes DHS, and the Intelligence Community, better able to focus existing assets while simultaneously building programs that will gain congressional approval for the resources necessary to develop capabilities to answer them.

An article in the June 17 edition of the Rutland (VT) Herald, and the Department’s response spotlighted this continuing information-sharing problem. In that article, the Commissioner of the Vermont Department of Safety and the state’s top homeland security official questioned the quality of DHS information reporting. In response, he received a rebuke from the Secretary’s spokesman who stated that the Commissioner’s concerns were, among other things, “disingenuous.” I find this kind of response to the legitimate concerns of a state’s Homeland Security principal unwarranted and disturbing. It highlights a perhaps subconscious mind-set or “bunker mentality” of a headquarters charged with a huge and unprecedented mission, but as a result of missteps, has become all too defensive and reactive.

Again, we are in this fight together. Requirements-based information sharing with at least America’s potentially high-consequence producing corporations is an imperative that will synergize Homeland Security capabilities, build greater trust in government, reveal the “dots” that need connecting, build resilient critical infrastructure services to empower businesses and communities, and thereby enhance the Nation’s preparedness and the effectiveness of its local, state, and Federal response capabilities. From a Congressional oversight perspective, requirements-based information sharing will provide objectively measurable standards to assess the effectiveness of DHS’s Information and Analysis and Infrastructure Protection organization’s information sharing efforts and, accordingly, manage resources in providing what the HSAC has consistently and repeatedly recommended: provision of requirements-based, timely, actionable and frequently updated Homeland Security information to the private sector.

Example Two: The Critical Infrastructure Task Force (CITF) Report

Consistent with the Secretary’s direction to the CITF to: “Review current and provide recommendations on advancing national critical infrastructure policy & planning to ensure the reliable delivery of critical infrastructure services while simultaneously reducing the consequences of the exploitation, destruction, or disruption of critical infrastructure products, services, and/or operations,” the CITF called for the transformation of critical infrastructure protection (CIP) policies and standards from current objectively unmeasurable iterations of “top-down” (i.e., Federally dominated) Cold-War and failed CIP programs (note the consequence amplifying results of protected critical infrastructure failures during Katrina) to an objectively measurable, achievable and sustainable resilience standard (i.e., desired time to reconstitution). The CITF recommended: Promulgate Critical Infrastructure Resilience (CIR) as the top-level strategic objective—the **desired outcome**—to drive national policy and planning.

The CITF’s principal and subsequent recommendations and the logic behind them reflect the results of highly-disciplined study by Americans of unquestioned vision, intellect, loyalty and accomplishment. They represent the critical infrastructure, business, community, regional and National perspectives and very publicly called for transformation in national Critical Infrastructure policy, plans, programs and objectives to “The Resilience Standard.”

Thus, in the wake of the next guaranteed failure of protection and resulting consequences that could have been avoided, there will be no cover for supporting the status quo.

While I have spoken throughout the country on “The Resilience Imperative” and have been published on the subject in the United Kingdom’s *Defence Management*

Journal and Freight Transport Review, and somewhat colorfully featured in the Cover Story “Snapping Back” in the June 15 edition of *Government Executive Magazine*, I urge the Committee if inclined not to take my word for anything on this issue to read the People’s Liberation Army’s paper: “Unrestricted Warfare,” Steve Flynn’s Book, “The Edge of Disaster: Rebuilding a Resilient Nation” and the reports of the HSAC’s Critical Infrastructure Task Force, The Infrastructure Security Partnerships Regional Disaster Resilience Guide (www.tisp.org) and the Council on Competitiveness’s newly released Transformation report at: (<http://www.compete.org/pdf/Transform.TheResilientEconomy.pdf>)

In its review of the resilience imperative, the Council on Competitiveness noted that the current policy tends to speak to Critical Infrastructure Protection in isolation—almost as though it were a national good like national security. But the fact of the matter—which is by now almost axiomatic—is that most of the critical infrastructure is owned by the private sector. Current policy and plans seem to ignore the fact that 100% of the private sector and the country depends on the operational resilience of those interdependent cyber and physical infrastructures for their own competitiveness and indeed survival. So an important question is: Why does the market not demand reliability, redundancy and resilience from their supporting critical infrastructure providers? The Council sees three explanations for the lack of market drivers:

First: Companies themselves have traditionally viewed operational risks—like critical infrastructure—as a back office function. Thus, critical infrastructure has far less visibility in the C Suite than financial risks. But, the Council noted, there is an urgent need for companies to become more risk intelligent—to understand that these kinds of business-empowering critical infrastructure realities that are “bet the company” risks to which CEOs and boards must focus their attention.

Second: The Federal Government’s critical infrastructure policies and approach work at odds with market drivers. The Council points out that the government tends to focus only on catastrophic failures. But, business investment is driven by a spectrum of risks not just a narrow slice of high-end risks. Ironically, the issues that companies must address to meet the day to day turbulence of operating in a global economy go a long way toward creating the capabilities to cope with catastrophe as well.

Third: The Government’s policies have almost uniformly focused on fences and firewalls, not strengthening the market drivers for resilience.

The report notes the need for objective metrics that companies can use to model the impact of critical infrastructure failures on their businesses.

As is evident from the results of the corporate meetings in Chicago and Columbus Ohio, I am confident that once costs of infrastructure failure become more transparent, companies will act. To that end and consistent with the efforts of The Infrastructure Security Partnership and the content of its Regional Disaster Resilience Guide, the Council recommended creation of regional centers for information exchange. The Council noted that linkages to critical infrastructures are almost always local or regional, not national. It therefore stands to reason that discussions regarding critical interdependencies, the potential for crisis and overall preparations, mitigation capacities, and the overall resilience of critical infrastructure services should be regional as well.

Albert Einstein defined insanity as “doing the same thing over and over again and expecting a different result.” In other words—iteration over innovation is not an acceptable answer to the Nation’s homeland security requirements. In lay terms, it simply doesn’t work to leap a twenty foot chasm in 20 one-foot jumps.

The CITF Report recommendations provided the chasm spanning “leap” and advancement in national Critical Infrastructure Planning and policy Secretary Chertoff requested. The resilience standard recommended by the CITF leverages the preparedness “basics” that are CIP policy and efforts. The report’s recommendations, as some have defensively suggested, does not abandon protection efforts. Resilience recognizes the lessons of infrastructure protection history and addresses foreign pronouncements and threats including the above mentioned Peoples Liberation Army document “Unrestricted Warfare.”

Resilience also provides an objective, universally understood and accepted investment and success metric—*Time*. Sufficient protection is not objectively quantifiable. It is impossible to answer the question How Much protection is enough? Thus, a proper level of protection is impossible to determine much less achieve and maintain. Since resilience is objectively measurable it advances historic, ongoing, and projected investments in business and government continuity and resiliency and Sarbanes-Oxley Act “Due Care” provisions. The resilience standard also supports the development of Terrorism Risk Insurance Act standards and addresses the physical realities of infrastructure placement and operation which operate in commu-

nities not sectors. Resilience is also a proactive rather than reactive and defensive mindset. Unlike the protection mindset that psychologically places an enterprise on the inside looking out, resilience addresses the “predator’s view” across an entire enterprise, community, or region and mitigates consequences regardless of their cause. (e.g., terrorist, insider, self-inflicted, accident, nature, cyber, physical).

The resilience standard is also nationally (and potentially globally) empowering. Because it is built from where the consequences will be felt, resilience is a shared and integrating responsibility and an objectively measurable standard and process for a scalable, technological, economic, social, and a long-overdue investment in America’s foundation (i.e., its Critical Infrastructure).

Since resilience is an objectively measurable condition it can be learned. It and the technologies that will support and sustain its achievement will provide a standard, processes and product that can *advance* the human condition throughout the planet.

During the public announcement of its recommendations, CITF member and Former Governor of Massachusetts Mitt Romney summed-up the need to make the policy and national preparedness transformation from protection to resilience: “You know, protection is where we tend to focus in government, but it is very, very clear that protection is not enough. . .”

Unfortunately, no actions have been taken or credible explanations provided for failure to implement the CITF’s principal recommendation.

The third example—Recommendations of the HSAC’s Culture Task Force

Secretary Ridge was emphatic in constantly focusing his DHS (formerly White House) staff on the reality: “When our hometowns are secure the homeland will be secure.”

In my experience, his focus was exactly where it should be—on where all human, physical, economic, and societal consequences will be felt and thus where all preparations and capabilities for meeting the challenges of the “all-hazards environment” are best known and understood and can be decisively acted upon.

In the wake of DHS’s understandable but less than admirable showing in the 2004 Federal Workplace Survey, and with the 2006 results on the horizon, Secretary Chertoff directed the HSAC to form a Culture Task Force to provide recommendations on shaping and improving the department’s culture. In the wake of the even less flattering results of the 2006 Federal Workplace Survey, the Culture Task Force provided its recommendations.

Chief among the recommendations were:

- Replace the Federal buzzword “Human Capital,” (the last time we considered humans as “capital” we were fighting a civil war);
- provide the opportunity for innovation; and
- establish a Deputy Secretary for Operations within DHS Headquarters

The Culture Task Force’s recommendations were designed to:

- **First:** Recast and foster empowerment of the department’s workforce. They are all valuable employees, they are not “capital” to be bartered.
- **Second:** Create an integrated Homeland Security Innovation Center to actively track and ensure disciplined review, processing, and response to ideas submitted to the department and its components focused on providing continuous improvement in Homeland Security policies, programs, and capabilities.
- **Third:** Provide the operational expertise and experience necessary to rather than build a “Team DHS” culture, build a unifying Homeland Security Mission Culture. In other words, build a culture with an intense focus on Homeland Security operations and capabilities of the likes we saw and admired in the actions of General Russell Honore and now Coast Guard Commandant Admiral Thad Allen in the wake of Hurricane Katrina.

To the best of my knowledge requirements based information sharing is still being discussed, no action has been taken on the recommendations of the Critical Infrastructure Task Force—although the word resilience was added at the 11th hour to the National Infrastructure Protection Plan. The Culture Task Force recommendation to create a Deputy Secretary for Operations has been rejected—largely for organizational (not operational) reasons.

From my experience, the non-public reception of the Task Force Reports’ recommendations reflect fatigue and thus an organizational preference for the status-quo, iteration over innovation and a concentration on “organizational equities” and processes. This is reflective of a headquarters “bunker mentality” that is inconsistent with the imperative of continuous improvement in the Nation’s homeland security capacities and preparedness—the Department’s sole reason for existence. As Mr. Frank Cilluffo, the first Executive Director of the HSAC used to put it: “The purpose of homeland security is to make the Nation not only safer, but stronger and

better.” I totally agree and thus given the need for continuous improvement in any national security entities operations find the Department’s responses to these and other HSAC recommendations a condition that must be corrected.

Recommendation:

Like the objectively measurable standards imbedded in the HSAC’s recommendations on requirements-based information sharing with the private sector, critical infrastructure resilience, creating a mission-based culture, and empowering innovation within DHS, it is imperative that objectively measurable standards be applied to the operation of the HSAC and all Homeland Security Advisory Committees.

Given the “all-hazards environment” in which we live and the resulting the need to:

- Provide requirements-based, timely, accurate and actionable information to all homeland security stakeholders,
- Arrest the catastrophic and even consequence amplifying failures of critical infrastructure protection that have witnessed and will occur again,
- Establish continuous innovation and a mission-first culture throughout the department,

I urge the Congress to create a quarterly HSAC and perhaps DHS Committee reporting requirement. The report would detail the public recommendations made by the HSAC and perhaps all Homeland Security Advisory Committees operating under the Federal Advisory Committee Act, the actions taken on them, recommendations not acted upon, and why and by whose authority.

In order to demonstrate work actually performed, I would include in the report the program and budget resources being applied to making recommendations reality. I would also urge the Committee to engage the resources of the Government Accountability Office and the DHS Inspector General in this reporting effort to ensure process and organizational reactions to questions posed to it (i.e., discussions, intent to act) is not confused with objectively measurable progress.

In closing, and at the risk of demonstrating a solid grip on the obvious, let me emphasize, that America is in a fight with morally if not intellectually inferior causes and people who are unfortunately creative, adaptive, dedicated, patient, imbedded and self-sacrificing. These adversaries have proven themselves effective in the godless acts of terrorism they inflict on both Muslim and non-Muslim societies. Thus, we are all in this fight for our existence. The Government does not have all the answers (not even all the questions at this point), but it does have the Constitutional responsibility to “. . . provide for the common defense.” The President and the Congress realize that Government and the Department of Homeland Security cannot do it alone. The HSAC—composed of people from both sides of the aisle—has repeatedly provided sound and executable recommendations throughout its history. Those that I highlighted above have, consistent with its Federal Advisory Committee Act responsibilities, been clearly and convincingly articulated in public venues. Thus, there will be no logical, ethical, moral, political or legal cover in the wake of the next catastrophe resulting from an “all-hazards” failure of intelligence, infrastructure protection, and/or organizational culture.

Mr. Chairman, I again thank you and the entire Committee for the opportunity to have my thoughts captured for the record and to appear before the committee on this most fundamental of homeland and national security issues. After 43 years of Federal service, it is difficult to stop working in the public interest and I do not intend to do so. In whatever capacity I may, I am at your and the Department’s service.

In closing, I offer a quote from Abraham Lincoln: “The dogmas of the quiet past are inadequate to the stormy present. The occasion is piled high with difficulty, and we must rise with the occasion. As our case is new, so we must think anew and act anew.”

Chairman THOMPSON. Thank you very much for your testimony. We will now hear from Mr. Beardsworth for 5 minutes.

STATEMENT OF RANDY BEARDSWORTH, FORMER ASSISTANT SECRETARY, STRATEGIC PLANS, DEPARTMENT OF HOMELAND SECURITY

Mr. BEARDSWORTH. Thank you, Mr. Chairman.

As you mentioned, I was former assistant secretary at the Department of Homeland Security. Before that, I was acting under-secretary for border and transportation security. I came to the de-

partment in 2002 during the transition office to help set the department up. But I am speaking as a private citizen today.

I am not an expert on FACA; I am not an expert on Federal advisory committees. I am an observer, consumer and a contributor, principally of the HSAC. I was also co-chair of the Office of State and Local Training Advisory Committee to the Federal Law Enforcement Training Center.

My experience is that FACs in general, and the HSAC in particular, their greatest strength is the expertise, the diversity, the different perspective. The depth and breadth of knowledge that they bring to the sponsoring agencies is their greatest strength.

There is a natural tension between FACs and sponsoring agencies, particularly the more visible and higher-level ones, and that is a tension between transparency and candor. Transparency is critically important, and every citizen has the right to know what is going on. The secretary or senior public officials also want to be able to ask the dumb questions and get the advice and expertise from the committee members.

My observations of the HSAC is that the members were high-quality, they were enthusiastic, they had a sense of purpose, and they were tremendously dedicated.

I will speak briefly about two reports that I was interested in. The first one was the critical infrastructure report that Jeff just talked about.

And my interest in that was in the emerging idea of resiliency. About the same time as the task force was working on their issues, I was beginning to think about resiliency in my capacity. We collaborated, we discussed what it meant. And I became convinced, as I think the committee, did, that if critical infrastructure protection was Homeland Security 101, resiliency was really Homeland Security 301. It is critically important, and I think that was well-said in the HSAC report.

The second issue and report that I would like to talk a little bit about was the Task Force on the Future of Terrorism.

My interest in this began about a year before the task force was brought together. I brought together all of the folks within the department that were dealing with any aspect of radicalization. And the first thing that we found was that, one, we didn't understand exactly what we meant by "radicalization," and, two, we didn't have an idea of what each other was doing.

We formed the Radicalization Working Group, of which I was chair, and we established a model of how we looked at radicalization. Starting at one end of the spectrum would be the point at which somebody has become radicalized, is about ready to engage in a violent act. And the mitigating factor, the way to deal with that, is through intelligence and law enforcement.

There is a more mid-term focus on communications, community relationships, trust-building, crisis management, that is equally important. And then there is a long-term perspective, which has to do with the fundamentals of why we don't have the same problems in America that Europe has, for example. And I think that goes to some fundamental American ideals that, if there were questions about that, I would be delighted to talk about.

But my interest with the task force was to ensure that the task force actually thought about more than just the particular act of violence at one end of the spectrum; that they included American ideals as a key element in the integration of at-risk communities. In other words, it is important to try to intercept an individual from becoming radicalized, but it is also important to take the moral oxygen out of the community where the bad guys may operate.

In summary, the value of the interaction with Federal advisory committees goes both ways. It is to advise the sponsoring agency, the senior official, but it is also an opportunity to heighten the public discourse on key issues: to wit, resiliency, the future of terrorism, and so forth.

Federal advisory committees need to seek a balance between transparency and providing unfettered, unvarnished opinions to senior leaders. They need to try to focus on strategic issues and fight through the noise of the tactical issues that the sponsoring agency may be dealing with on a day-to-day basis.

I think the HSAC in particular has matured and continues to mature. And, as I said, that it is not just the reports, it is the interaction and the public discourse that is important.

Thank you, sir.

[The statement of Mr. Beardsworth follows:]

PREPARED STATEMENT OF RANDY BEARDWORTH

Chairman Thompson, Ranking Member King, and distinguished Members of the Committee, thank you for the opportunity to share my perspectives on Federal Advisory Committees, and specifically the Homeland Security Advisory Committee (HSAC).

In the fall of 2006, I resigned my position as Assistant Secretary of Strategic Plans within the Department of Homeland Security's Policy Directorate. I served previously as Acting Under Secretary of Border and Transportation Security, a position I assumed in March 2005. I first joined the Department in December 2002 as a member of the transition team that established the Department of Homeland Security, and served in each of my positions at DHS as a career civil servant. Though I am currently the Vice President of Human Capital and Corporate Communications for Analytic Services, Inc., a not-for-profit corporation that provides analytic support to the government in both national security and homeland security, my testimony today is as a private citizen.

In my various capacities within the Department of Homeland Security and in my current capacity, I have enjoyed the opportunity to meet and brief the Homeland Security Advisory Council on a number of topics. I have read and consumed selected reports, and have spoken with several of the members on a variety of topics. During my tenure at DHS, however, I had no responsibility for the performance of the HSAC or for the HSAC's interaction with its primary beneficiary—the Secretary. I was and remain, in effect, a consumer of their products and an observer of their interaction with the Department and with the public. In addition to my interaction with the HSAC, I also co-chaired the Advisory Committee to the Office of State & Local Training in support of the Federal Law Enforcement Training Center, a DHS Federal Advisory Committee (FAC) external to the HSAC.

You have asked me to address several issues at today's hearing: the efficiency and effectiveness of the HSAC in addressing pressing issues of Homeland Security, the extent to which the Department makes use of HSAC reports, and the degree to which the Department capitalizes on the talents of the HSAC's individual members.

The most valuable contributions by any Federal Advisory Committee, and the HSAC in particular, come by way of the depth of knowledge and broad perspective of individual members. The effectiveness of FACs depends largely on their ability to master a tricky balancing act between transparency and candor. The public has a right to understand the mechanics and nature of the Committee itself, including the composition of its membership, its operation, and its recommendations. Senior officials in the Executive branch, without eschewing transparency, need candid ad-

vice from experts unfettered by the constraints of press coverage and public exposure.

In general, and not in reference to any committee in particular, Federal Advisory Committees are most successful when committee members and the sponsoring official recognize these dynamics. Effectiveness, to a large degree, depends on the willingness of Committee members to gracefully accept their moments in the national spotlight—informing the public while not gratuitously antagonizing the sponsor, and maintaining honesty and frankness in private discussions among themselves and with senior officials. Committee members must ensure their reports are of the highest quality and reflect the best thinking available in their area of responsibility. The sponsor, conversely, must recognize that the advisory committee is not a rubber stamp for administration policy, but is, indeed, a group of experts who are dedicating themselves to helping the government understand and solve some of the nation's most pressing issues. Public meetings and reports are part of this arrangement and can be useful tools in shaping the public discourse. It is also critical that the sponsor give sufficient time to the advisory committee. Nothing is more frustrating to committee members than to work diligently on a problem without the opportunity to present findings, engage in a discussion with the sponsor, and be taken seriously as a valued contributor.

During the period I was most engaged with the HSAC, I was impressed by both the quality of its membership—their enthusiasm and sense of purpose in helping the Department with the tough issues—and the Department's efforts to inform and educate the committee on DHS activities. I was also aware of the types of tensions not uncommon to Federal Advisory Committees, including the tension between senior officials' lack of enthusiasm about engaging the Committee publicly and the Committee's resultant lack of meaningful access to decision makers. Another source of tension was the Department's focus on short term, tactical, and political issues as opposed to the HSAC's longer term strategic approach to issues.

I was particularly interested in three of the HSAC's products in recent years—its reports on Critical Infrastructure, the Future of Terrorism, and DHS Culture. I will comment upon two of these reports; the Task Force on Critical Infrastructure Report, of which I was a consumer, and the Task Force on the Future of Terrorism Report, of which I was both a consumer and contributor. While keenly interested in the Culture Report, I had little interaction with the Task Force and the Task Force's report was issued several months after I departed the Department.

The Critical Infrastructure Task Force Report illustrated the long term focus of the HSAC. The task force gave considerable, intellectually sound thought to this important national issue. The portion of the report I personally found most interesting was that of resilience, a topic I had discussed with the task force several times. I had been impressed with the notion and language of resilience coming out of the United Kingdom, and the important point on that side of the Atlantic about the necessity of bouncing back or recovering after an attack. This notion of resiliency was not simply about restoring services, but about attitude and confidence in the overall system. In my discussions with the HSAC task force it became clear to me that the task force and I were independently reaching similar conclusions about critical infrastructure, and if critical infrastructure protection was Homeland Security 101, Resiliency would be Homeland Security 301. We had to begin to shift our focus to restoring systems rather than protecting individual pieces of critical infrastructure. This was particularly evident in the aftermath of Katrina, and as I reflected back to the 2005 TOPOFF 3 exercise, I realized that we were clearly beginning to think about resiliency then, though not as an overarching goal or systematic way of thinking about critical infrastructure. Following my discussions with the task force, I made an effort to institutionalize the notion of resiliency, and built the concept into the Department's draft 2006 Strategic Plan.

The second HSAC project in which I had a particular interest was the report of the Task Force on the Future of Terrorism, a report in which I was cited as a subject matter expert. I was very much interested in seeing that the report reflected the emerging views of a group of experts I had assembled on the subject—views concerning the importance of American ideals as a key element in the integration of at-risk communities in preventing violent homegrown extremism.

A year or so before the HSAC Task Force was established I convened a meeting of the various offices and components within the Department working on any aspect of "radicalization," a concept whose definition was, at the time, vague and ambiguous and an issue on which interagency efforts were poorly coordinated. The first thing we realized was that each office or component had different notions of what radicalization meant, and that few offices knew about or understood the work of the others. In fact, the Department was engaged in a number of activities under the broad rubric of understanding and countering "radicalization." The Intelligence and

Analysis Directorate, for example, was engaged in intelligence community activities related to radicalization and was conducting a systematic survey of radicalization dynamics within several key states. The Science and Technology Directorate had two significant initiatives that offered resources to study the issue: the Center of Excellence for the Study of Terrorism and Responses to Terrorism (START) at the University of Maryland, and an academic partnership program that could draw upon prominent experts within the social sciences. The U.S. Citizenship and Immigration Service was coordinating the “Task Force for New Americans,” an inter-agency effort to help legal immigrants embrace the common core of American civic culture. The Office of Civil Rights and Civil Liberties was providing leadership with-in government on opening avenues of communication with key communities, on managing crisis communication, and on highlighting the government’s commitment to investigating and prosecuting hate crimes and discrimination. The Policy Directorate was, of course, engaged in long term strategies and was the primary interface with the larger government community on planning. Out of this first meeting emerged the Department’s Radicalization Working Group (RWG).

The RWG would eventually grow to include members from across the Department, including staff members of the HSAC, and would provide subject matter analysis for the report of the Task Force on the Future of Terrorism. The RWG hosted a number of forum events (including one that examined the dynamics and structural contrasts of radicalization in the U.S. and Europe) and eventually identified a number of strategic advantages inherent to the American civil and social fabric—namely, our low barriers to economic participation, the religiously accepting and ethnically plural character of our society, and the nature of the civil democratic spirit that permeates our culture. The RWG established relationships with partners at the Department of Justice, the Bureau of Prisons and its Correctional Intelligence Initiative, the Department of State, and foreign counterpart agencies in the United Kingdom, Canada, France, the Netherlands, and other nations interested in the issue and dynamics of radicalization. The HSAC Task Force was able to capitalize on these relationships in the creation of its report, and was able to draw upon members of the group as subject matter experts to testify on the Department’s emerging approach in understanding the dynamics of the issue, enhancing the capabilities of state and locals, and engaging with key communities to prevent estrangement and cultural isolation.

While the focus of the report of the task force was far broader than radicalization, it included a number of findings from the Department’s Radicalization Working Group. The report served to educate various state, local, and private sector leaders on the dynamics of the issue, and highlighted its importance to senior leadership at the Department. The report also foreshadowed the recent National Intelligence Estimate on the Terrorist Threat to the U.S. Homeland, released last week.

As an aside, it is important to remember that understanding terrorism, at least in the U.S., is an evolving discipline. In the two years that I have been engaged in this issue I have seen tremendous progress in understanding the phenomenon of radicalization. The task force’s report was an appropriate snapshot at the point it was written.

Certainly the issues the HSAC has addressed have been important strategic issues. While the quality and impact of the reports vary, all of the reports have salient points and have helped shape the discussion within the Department and in the public. While the primary consumer of the Committee’s work is the Secretary, the real audience is the senior leadership and policy shapers within the Department, and in that respect I give the HSAC passing marks in both efficiency and effectiveness. My sense is that while the reports are useful, the real impact of the Committee lies in the personal interchanges with senior staff during the course of research and shaping ideas and recommendations. I personally found these discussions to be most useful. I cannot speak for the Secretary, but I presume that his ongoing interactions and discussions with the HSAC and members of the HSAC were as beneficial, if not more so, than the actual reports.

In summary, Federal Advisory Committees and their sponsors must balance the need for open and transparent processes and discussions with the value of frank and candid exchanges of ideas. In my personal experience with the HSAC I have seen a maturing that indicates this balance is acceptable. Finally, the value of the HSAC resides not just in the reports it issues, but also in the exchange of ideas as it researches and prepares the report.

Thank you Chairman Thompson, Ranking Member King, and Members for this opportunity to speak on this important issue.

Chairman THOMPSON. Thank you very much for your testimony. We will now hear from Ms. Weismann for 5 minutes.

**STATEMENT OF ANNE WEISMANN, CHIEF COUNSEL, CITIZENS
FOR RESPONSIBILITY AND ETHICS IN WASHINGTON**

Ms. WEISMANN. Mr. Chairman, members of the committee, thank you for the opportunity to testify before you today on this important issue.

While agencies' use of Federal advisory committees has proliferated, the public has not seen always an increased benefit from the vast sums of money that such committees cost the Federal Government. Just as troubling, advisory committees are too often established to be mouthpieces for an agency's predetermined agenda.

My organization, Citizens for Responsibility and Ethics in Washington, or CREW, has been tracking, to the extent we can, the activities of agencies like DHS, both in terms of their effectiveness as an overall agency and their compliance with laws such as the FACA.

Based on our observations, CREW believes there are changes that this committee could propose for how DHS oversees and manages the many advisory committees under its direction that would lead to greater transparency, efficiency and usefulness of the committees.

We find ourselves today with what has been called a "shadow government" of at least 900 advisory committees weighing in on a range of critically important issues, from terrorism to climate change to the expenditure of billion-dollar-a-year Federal programs.

We understand that for fiscal year 2007 DHS plans to spend at least \$8 million on advisory committees. And that is why we think it is so important that this committee review of those activities, particularly in light of the revolving-door syndrome to which DHS has been subject almost since its inception and which raises serious issues of potential conflicts of interest.

Last year, the New York Times reported that dozens of former DHS officials are now trading in on their agency relationship and domestic security credentials that they acquired while at DHS in their now-private-sector, high-paying jobs as executives, consultants or lobbyists for companies that do billions of dollars a year of domestic security business.

To the extent that officials like these, former officials, are now advising DHS on security-related matters as members of an advisory committee, there is a risk that their participation undermines the objectivity of any committee recommendations.

It is difficult for watchdog groups like CREW, however, to get a handle on precisely what advisory committees are doing and the extent to which they are complying with the FACA's requirements. This is because if a committee chooses to flout the law and operate in secret, there is simply no way for CREW to find out until the agency takes a public action based on the recommendations of an advisory committee.

That is why we submit that litigation that our group engages in is often a crude and ineffective way of ensuring an agency's adequate and timely compliance with the FACA, because by the time we find out about a problem, it is often too late to fix it.

Therefore, we support the idea of building more accountability for advisory committees within the agency itself. Toward that end,

this committee should consider legislation that would require DHS to have stringent conflict-of-interest controls in place when choosing membership on an advisory committee.

You should also consider a centralized office or position within DHS that oversees and coordinates all the activities of advisory committees and that pays particular attention on the public accountability provisions of that statute, which include the FACA's requirements that the committees be fairly balanced; that their meetings, records and reports be open to the public; and that the public receive adequate notice of advisory committee meetings.

We also urge the committee to consider establishing metrics that would periodically assess the usefulness and efficacy of all DHS outstanding advisory committees.

Beyond DHS, CREW supports legislation that would close up loopholes in the FACA itself that agencies have exploited to avoid operating in the public light. For example, if agencies set up working groups or sub-groups that do the primary work of the committee, the courts have found that those working groups and sub-groups do not need to comply with FACA and therefore do not need to comply with FACA's openness requirements.

We recognize that legislative changes to the FACA are beyond the jurisdiction of this committee, but we hope that this committee's work here will spur others in Congress to consider broader legislative changes.

Given the critical mission with which DHS is charged, it is imperative that agency decision-makers are provided with recommendations that are the product of a disinterested committee representing a broad range of viewpoints and expertise. At the same time, the American taxpayer should not have to bear the burden of funding unproductive committees that have long outlasted their usefulness and survive only out of administrative inertia.

I would be happy to answer any questions you have.

[The statement of Ms. Weismann follows:]

PREPARED STATEMENT OF ANNE L. WEISMANN

Mr. Chairman, Ranking Member King and Members of the Committee, thank you for the opportunity to testify before you today on this important issue. While agencies' use of federal advisory committees has proliferated, the public has not seen an increased benefit from the vast sums of money that such committees cost the federal government. Just as troubling, advisory committees are too often established to be mouthpieces for an agency's pre-determined agenda. Unfortunately, the advisory committees that the Department of Homeland Security ("DHS") has set up appear to be no exception.

My organization, Citizens for Responsibility and Ethics in Washington ("CREW"), has been tracking the activities of agencies like DHS, both in terms of their effectiveness and their compliance with the Federal Advisory Committee Act ("FACA"). My testimony today is based on CREW's observations, as well as our understanding of what the FACA requires and how, as a legal matter, agencies fall short of the statute's requirements. In addition, CREW believes there are legislative changes that this Committee could propose for how DHS oversees and manages the many advisory committees under its direction that would lead to greater transparency, efficiency, and usefulness of the committees.

When Congress passed the FACA in 1972, it had a two-fold purpose: to reduce wasteful expenditures by federal agencies on advisory committees and to make the committees more accountable to the public. In particular, Congress found that the government had not adequately reviewed the need for many of the then-existing advisory committees. To address this concern, Congress declared that "new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary." 5 U.S.C. App. §2(b)(2). In

addition, Congress declared that advisory committees “should be terminated when they are no longer carrying out the purposes for which they were established.” 5 U.S.C. App. § 2(b)(3).

On the issue of accountability, Congress made clear its concern that special interest groups could hijack advisory committees and steer them to their own agendas, thereby exerting “undue influence” on legislative decisions.¹ To address this concern, Congress required that membership of advisory committees be “fairly balanced in terms of points of view represented and the functions to be performed by the advisory committee.” 5 U.S.C. App. §§ 5(b)(2) and (c). This requirement was intended to ensure that advisory committees “not be influenced inappropriately by the appointing authority or any special interest.”²

Despite these clear statutory directives, we find ourselves today with what has been called a “shadow government” of at least 900 advisory committees³ weighing in on a range of critically important issues, from terrorism to climate change and the disbursement of a six-billion dollar Reading First program, too often with little oversight or review by the agencies that created them. A report issued by the Center for Public Integrity highlights how many of these 900 committees, composed collectively of 67,000 members at a cost of almost \$400 million annually, have taken advantage of loopholes in the FACA to avoid the statute’s transparency requirements and how many are plagued by flagrant conflicts of interest.⁴ In other words, despite the passage of the FACA, we are facing many of the same problems that led Congress to enact the FACA in the first place.

We understand that for Fiscal Year 2007, DHS plans to spend more than \$8 million a year on advisory committees. CREW applauds this Committee’s review of those committees, particularly in light of the revolving door syndrome to which DHS has been subject almost since its inception, which raises the potential for serious conflicts of interest. Last year *The New York Times* reported that dozens of former DHS officials are now trading in on their agency relationship and domestic security credentials acquired at DHS in their private-sector, high paying jobs as executives, consultants or lobbyists for companies that do billions of dollars a year of domestic security business.⁵ For example, three months after leaving DHS, former Secretary Tom Ridge was appointed to the corporate board of Savi Technology, a company that DHS promoted under Secretary Ridge’s leadership. To the extent any of these former DHS officials are now advising DHS on security-related matters as members of an advisory committee, their participation undermines the objectivity of any committee recommendations. The Center for Public Integrity’s report expressly notes the dangers posed by advisory committees that are “packed with industry representatives.”⁶ In our experience, advisory committees too often are set up as a rubber stamp for a pre-determined outcome. In that way they thwart, rather than serve, the FACA’s purpose of facilitating a process where independent, outside voices can be heard.

It is difficult for watchdog groups like CREW, however, to get a handle on precisely what advisory committees are doing and the extent to which they are complying with the FACA’s requirements. This is because if a committee chooses to flout those requirements and operate in secret, there is often no way for CREW to know until the agency takes an action based on the recommendations of an advisory committee. So, for example, CREW did not learn that an advisory committee set up by the Department of Education to make recommendations on how funds under the one-billion-dollar-a-year Reading First program should be disbursed until Education’s Inspector General issued a report detailing the blatant conflicts of interest of the committee’s members and the fact that they had operated entirely in secret. At that point CREW filed a lawsuit against the Department of Education and Education Secretary Margaret Spellings based on their failure to comply with the FACA in their administration of this advisory committee. While we have been successful in getting the agency to release many of the thousands of pages of documents that the committee relied upon, there is no way to undo the tainted funding process that led to states’ funding being conditioned on the requirement that they purchase cer-

¹H.R. Rep. No. 92–1017, as reprinted in 1972 U.S.C.C.A.N. at 3496 (“One of the great dangers in this unregulated use of advisory committees is that special interest groups may use their membership on such bodies to promote their private concerns.”).

²H.R. Rep. No. 92–1017, as reprinted in 1972 U.S.C.C.A.N. at 3496.

³See GAO–04–328 Federal Advisory Committees, p. 14.

⁴Jim Morris and Alejandra Fernandez Morera, *Network of 900 Advisory Panels Wields Unseen Power*, Center for Public Integrity, March 27, 2007, available at <http://www.publicintegrity.org/shadow/report.apx?aid=821>.

⁵Eric Lipton, *Former Antiterror Officials Find Industry Pays Better*, *The New York Times*, June 18, 2006.

⁶Morris and Morera, Center for Public Integrity, Mar. 27, 2007.

tain reading materials, particularly those produced by high-level campaign contributors of President Bush.

Because litigation is often a crude and ineffective method of ensuring an agency's adequate and timely compliance with the FACA, we support the idea of building more accountability for advisory committees within the agency itself. Toward that end, this Committee should consider legislation that would require DHS to have stringent conflict-of-interest controls in place when choosing membership on an advisory committee. Such legislation should also create a centralized office or position within DHS that oversees and coordinates all the activities of advisory committees that the agency creates. This office or position should also be charged with requiring any advisory committee under DHS to comply with all of the FACA's requirements, with particular focus on the public accountability provisions of the statute. These include the FACA's requirements that the committees be fairly balanced; that their meetings, records and reports be open to the public; and that the public receive advance notice of advisory committee meetings.⁷ Although Section 8 of the FACA requires agency heads to establish administrative guidelines and management controls and to maintain general information on the nature and function of advisory committees within their jurisdiction, more specific mandates are necessary. We also urge the Committee to require DHS to establish metrics to periodically assess the usefulness and efficiency of each outstanding advisory committee.

Beyond DHS, we also support legislation that would close up loopholes in the FACA that agencies have exploited to avoid operating in the public light. Advisory committees have discovered, for example, that if they set up so-called "working groups" that report to them, all of the substantive work of the committee can be done in secret by these sub-groups, which the courts have found need not comply with the FACA. Plugging this frequently exploited loophole should be a top priority for any legislative changes to the FACA. In addition, we recommend adding strict conflict-of-interest screening requirements to ensure that advisory committees are truly fairly balanced and not composed of members who have a financial stake in the outcome of the committee's recommendations. We recognize that legislative changes to the FACA are beyond the jurisdiction of this Committee, but hope that the Committee's work here will spur others in Congress to consider broader legislative actions.

Given the critical mission with which DHS is charged, it is imperative that agency decision-makers are provided with recommendations that are the product of a disinterested committee representing a broad range of viewpoints and expertise. At the same time, the American taxpayer should not have to bear the burden of funding unproductive committees that have long outlasted their usefulness but survive only out of administrative inertia. Improving the efficacy and efficiency of DHS's advisory committees will fulfill FACA's original twin goals.

I would be happy to answer any questions you have.

Chairman THOMPSON. Thank you very much.
We will now hear from Mr. Berkeley for 5 minutes.

**STATEMENT OF ALFRED BERKELEY, CHAIRMAN AND CEO,
PIPELINE TRADING SYSTEMS, LLC**

Mr. BERKELEY. Thank you, Mr. Chairman.

I am a citizen serving on the National Infrastructure Advisory Council, which was established in October of 2001, just after the events of 9/11. It is under an executive order that has been renewed two or three times.

We have been asked to opine on various questions and provide recommendations. We have produced 13 reports and are working on two now.

The National Infrastructure Advisory Committee has members from various industries, as well as representatives of state and local government and of first responders, including fire, police and emergency services.

To give you a flavor of the industry groups that participate, we have members from electric utilities. I am a representative of the

⁷See 5 U.S.C. App. § 10.

financial services industry. We have CEOs of technology companies like Intel and Akamai. We have representatives from the water industry, the chemical industry, the airline industry, the food industry, from higher education. We have had members from PhRMA and from transportation, including trucking and rail, over and above the airline that I mentioned. And finally, we have had the CEO of an oil company.

The way we operate is to be given requests to give opinions on particular problems. Those have come from the White House. They have come from the secretary of DHS. They have come from the secretary of health and human services. And we also, when we stumble upon an area in one examination and think it is relevant and interesting, we will suggest that and consider it as a group and run it by the White House.

I would note that NIAC is a presidential advisory committee, administratively supported by DHS. Before DHS existed, we were supported by the National Security Council.

Our current chairman, Erle Nye, is a former chairman of TXU, a large electric utility. He wanted me to express his regrets at not being able to be here today. But I mention him in addition to his chairmanship but also because he is very typical of the CEOs that we have, who have spent a lifetime in a particular industry. We started with eight industry sectors and have gradually been expanded to where we now have 17 that we coordinate with.

As I said earlier, we have produced 13 reports. I want to mention three of them that I think have been particularly important and two more that have interesting characteristics.

The most interesting, from my point of view, was the sector partnership model. We produced a report that looked at the issue of: How do we, as a country, have a sensible conversation between private sectors that have essentially 95 percent of the infrastructure and the government that has the task of protecting and helping make those resilient?

That report, along with another one which was really all about how do we, as a country, manage the differences in risk that various types of threats post, came together in what is called the National Infrastructure Protection Plan.

Most of the recommendations that were made in these two reports—how do you mechanically and how do you philosophically bring together private-sector and government agencies, and how do you put this risk-adjusted overlay on things—really have become implemented in a very concrete way, so much so that now individual states are copying this model. I heard yesterday that Nebraska and Iowa are looking to implement essentially a mirror image of this at the state level.

So I mention those because I think it is important to recognize that you have got essentially 30 citizens coming together, answering questions, giving their best advice for a question asked that is relevant at a moment in time and hopefully for a longer period of time, and you do see the advice implemented.

There are a couple other reports that I wanted to mention because we have the vulnerability scoring system that we developed for cyber attacks that has been adopted by the industry. And we

are currently working on a chem-bio, and we recently turned in an avian flu report that has found widespread use in HHS.

We meet publicly quarterly. We do have working groups. The way we organize our work is through working groups.

And I am delighted to take any questions that you have.

[The statement of Mr. Berkeley follows:]

PREPARED STATEMENT OF ALFRED R. KERKELEY, III

Good morning Chairman Thompson, Ranking Member King and distinguished Members of the Committee. My name is Alfred Berkeley and I am currently the Chairman and CEO of Pipeline Trading Systems and the past President and Vice-Chairman of the NASDAQ Stock Market, Inc. It is a pleasure to appear before you today to discuss the National Infrastructure Advisory Council (NIAC) and its role as a Presidential Advisory Committee.

The National Infrastructure Advisory Council (NIAC) was created by Executive Order 13231 of October 16, 2001, as amended by Executive Order 13286 of February 28, 2003 and Executive Order 13385 of September 29, 2005.

The NIAC Chair and its members are appointed by the President and serve at the President's discretion. Currently, the NIAC Chair position is held by Mr. Erle A. Nye, Chairman Emeritus, TXU Corp. On behalf of Mr. Nye, I would like to express his regrets that he cannot be here to testify before you.

The members of the NIAC, numbering no more than 30, are selected from the private sector, including industry and academia, as well as State and local government, and serve as Special Government Employees (SGEs) as defined in section 202(a) of title 18, U.S. Code.

The members have expertise relevant to the functions of the NIAC with responsibilities for the security of critical infrastructure supporting key sectors of the economy such as banking and finance, transportation, energy, communications, and emergency government services.

Members cannot be full-time employees of the executive branch of the Federal government and, in turn, are not allowed to represent the organizations by whom they may be employed. All members are also required to have appropriate security clearances.

As prescribed by the NIAC Charter, the NIAC supports a coordinated effort by both government and private sector entities to advise the President through the Secretary of Homeland Security on issues related to the security of the nation's critical infrastructures.

To accomplish its objectives, the NIAC draws on the expertise of its members to provide advice and make recommendations that:

- a. enhance cooperation between the public and private sectors in protecting information systems, supporting critical infrastructures in key economic sectors, and providing reports on the issue to the President, as appropriate;
- b. enhance cooperation between the public and private sectors in protecting critical infrastructure assets and increasing resiliency in key economic sectors and providing reports on these issues to the President, as appropriate; and
- c. propose and develop ways to encourage private industry to perform periodic risk assessments of its critical information and telecommunications systems.

The NIAC defers matters pertaining to National Security and Emergency Preparedness Communications to the President's National Security Telecommunications Advisory Committee (NSTAC) as such, the NIAC coordinates all National Security and Emergency Preparedness related interdependency issues with the NSTAC.

We have broad authority. The NIAC may consult with any interested party, including any private group or individual, government department, agency, inter-agency committee, or other government entity. Further, the NIAC may hold hearings, conduct inquiries, and establish, with the concurrence of the Executive Director or his or her designee, an executive committee, and other subcommittees, as he or she considers necessary or appropriate, subject to the provisions of FACA. Additionally, The NIAC may provide advice and recommendations to Federal government lead agencies that have critical infrastructure responsibilities and to industry sector coordinating mechanisms.

The Council also has the authority to provide advice directly to the heads of other agencies that have shared responsibility for critical infrastructure protection, including Health and Human Services, Transportation, and Energy.

The NIAC meets publicly four times each year. Two of the meetings are by teleconference and two are in-person. All meetings are hosted in Washington, D.C., in

a venue open to the public. The Council uses its public meetings as working meetings. The standard agenda focuses on progress reports from working groups and on deliberations to produce useful, timely, and actionable recommendations. The Council is very active, taking on four to six major studies per year; performance goals are attuned to delivering quality, well researched reports between 6-12 months from the inception of the selected studies. NIAC reports have drawn public and private sector interest. Public meetings are normally attended by several members of the Press. The President meets with the Council at least once a year and has directed very specific requests to the Council for recommendations on issues of interest. The White House monitors the progress of the Council's studies on a regular basis between meetings through a liaison in the Homeland Security Council.

Administrative and financial support is provided by the National Protection and Programs Directorate of the Department of Homeland Security. Before the Department of Homeland Security was created, we were supported by the National Security Council.

NIAC projects and study requests come from several sources:

- (1) The primary source of requests for studies is the White House. An example is the *Hardening the Internet Report and Recommendations*. (2) The DHS Secretary or heads of other Departments may also ask the Council to develop recommendations. (Example: In a letter dated May 17, 2006, DHS Secretary Michael Chertoff and HHS Secretary Michael O. Leavitt jointly requested the NIAC take on the *Prioritization of Critical Infrastructure in the Event of a Pandemic Influenza Report and Recommendations*. This represents the first time the Council addressed recommendations stemming from a joint request.)
- (3) The Council itself can independently decide to address certain topics. As reports near conclusion, the working members may deliberate on independently developed topics. The *Chemical, Biological, and Radiological Events (CBR) and the Critical Infrastructure Workforce Working Group*, currently underway, represents an example of this type of charge.

In order to generate actionable recommendations, the Council creates Working Groups composed of Council members supported by Study Groups. The Study Groups consist of member-appointed subject matter experts who help provide the background and subject expertise required to develop recommendations pertinent to critical infrastructure protection. These groups rely on open-source research papers, presentations from outside experts, and their own extensive backgrounds to help drive preliminary findings. Subsequently, the preliminary findings lead to the development of the final Working Group recommendations which are presented to the entire Council for review, approval or revision during the quarterly business meetings.

Since the Council's inception, the NIAC has released thirteen reports; with two more slated for completion in the near future. Three particularly significant reports are the *Sector Partnership Model Implementation Report and Recommendations*, the *Prioritization of Critical Infrastructure in the Event of a Pandemic Influenza Report and Recommendations* and the *Risk Management Approaches to Protection Report*.

Released on October 11, 2005, the *Sector Partnership Model Implementation Report* offered numerous recommendations designed to maximize the public-private partnership as well as ensure trust and cultivate an effective working relationship. This report identified roles for:

- a. Sector Coordinating Councils (SCCs),
- b. Government Coordinating Councils (GCCs), and
- c. Partnership for Critical Infrastructure Security (PCIS).

In this report, the NIAC concluded that successful implementation of the Sector Partnership Model (as laid out in the National Infrastructure Protection Plan) requires an unprecedented level of public-private cooperation to secure the Nation's critical infrastructure. In order to meet this challenge, the NIAC recommended that the Secretary exercise the Section 871 authority granted to him under the Homeland Security Act of 2002.

The Council also was requested to provide guidance on a permanent framework for public-private sector coordination. The Council undertook this study quickly, drew inputs from many parties, and provided a recommended structure and some suggested rules of engagement.

Recognizing the necessity of a mechanism that promotes meaningful dialogue on key critical infrastructure protection issues alongside agreement on mutual action between government and owner/operator entities, Secretary Chertoff accepted the NIAC findings. In March 2006, he established the Critical Infrastructure Partnership Advisory Council (CIPAC) and exempted it from the requirements of FACA. The CIPAC currently provides government agencies and the CI/KR owners and operators with an institutionalized process and single point of entry for programmatic planning, strategy, policy, implementation, and joint monitoring of progress. I be-

lieve that the critical infrastructures and their corresponding governmental organization are working more closely together to as a result of this effort.

Perhaps the most notable and recent work of the NIAC is related to a potential avian influenza pandemic. The Council was requested by the Secretaries of Homeland Security and Health & Human Services to undertake an assessment of the operations of critical infrastructures during a pandemic, with a particular focus on protecting the workers in critical infrastructures who have roles critical to operations. Essential services must continue to be provided during a pandemic; day-to-day activities can not be allowed to degrade due to the failure of critical infrastructure to include electricity, drinking water, banking, or health care.

Released on January 16, 2007, the *Prioritization of Critical Infrastructure in the Event of a Pandemic Influenza Report and Recommendations* is already being used in pandemic planning. At the Council's most recent meeting on July 10, Rear Admiral W. Craig Vanderwagen, M.D., Assistant Secretary for Preparedness and Response at HHS, lauded the report for its immediate effectiveness. He stated the recommendations could also apply in the face of other potential events requiring workforce prioritization, whether it is a biological attack or some other naturally occurring event.

The *Risk Management Approaches to Protection Report* was released in October of 2005. Within that report, the recommendation to create and standardize risk methodologies and mechanisms across the government was accepted and is reflected in the structure of the NIPP. As a result, this recommendation is being implemented in programs across DHS and the Sector Specific Agencies.

I would like to offer one final example of the contributions made by the NIAC. The sharing of intelligence information, not just from the intelligence community to critical infrastructures, but also from industry to the intelligence community, is a fundamental aspect of infrastructure operations. The NIAC undertook a study that included representatives of the intelligence community and security personnel, and produced a report with recommendations to improve public-private sector intelligence coordination.

The intelligence coordination report, sector partnership report, risk management report and pandemic report contain recommendations that cross multiple government agencies. The protection of critical infrastructures is a shared role among many agencies of the U.S. government, and one in which the Department of Homeland Security is designated as a leader. Mr. Chairman, my own view, and I believe that of other NIAC members, is that the Secretary of Homeland Security has carefully considered the recommendations of the NIAC and acts strategically when recommendations are received.

Mr. Chairman, the operation of our economy and the health and welfare of the citizens of the United States depends upon the functionality of our "critical infrastructures". The public and private sectors have many efforts underway to improve the security, preparedness, protection, and response for these services. The NIAC seeks to provide guidance that will improve the overall public-private sector cooperation and coordination for critical infrastructure protection, including federal-level agencies, state and local agencies and first responders, and critical infrastructure owners and operators.

I firmly believe that the members of the NIAC are making a significant contribution to our nation and I am proud to have been a member since 2002.

Thank you for the opportunity to meet with you today. I would be pleased to take any questions that you may have.

Chairman THOMPSON. Thank you very much.

And let me thank all the witnesses for their testimony.

And I will start the questioning of the witnesses with my 5 minutes.

Mr. Gaynor, you had personal experience on a committee. And we thank you for your service. And, you know, this is very open-ended for you, but on a scale from one to 10, one being low, 10 being high, how would you rank that experience?

Mr. GAYNOR. Thank you, Mr. Chairman. Good question, and a tough one at that.

At moments, it was a nine or a 10. At other moments, it was a one. If I am looking for an average for my 4 years on the HSAC, in terms of getting things done, about a six.

Chairman THOMPSON. Do you feel that, as a member, you were provided either training or information necessary for you to be an effective member of that committee?

Mr. GAYNOR. Yes, sir. I was a designated Federal official for the Emergency Response Senior Advisory Committee and the Critical Infrastructure Task Force. I wasn't, per se, a member of the committee.

Chairman THOMPSON. OK, OK.

Mr. GAYNOR. But as far as my training goes, the DFO training was good. It was spot-on. And I had plenty of resources to turn to if I thought I was going astray.

Chairman THOMPSON. All right.

Ms. Weismann, I take it CREW's position with respect to advisory committees is that there is a need for their work to be done in public, from the standpoint of their deliberations and what have you. And, if not, can you kind of share—you made reference to it in your testimony.

Ms. WEISMANN. Yes, Mr. Chairman.

It is not just CREW's position, it is the FACA itself. When Congress established this law, the Federal Advisory Committee Act, it was acting, I think, in part out of a recognition that these advisory committees play a critical role and yet, too often, their work is done in secret where there is just no level of public accountability. So the statute itself mandates that committee meetings be open to the public, that the working papers of the committee meetings be available to the public, that the public get advanced notice.

There are provisions in the act under which a particular advisory committee can choose to close its meetings. And in the context of national security, one can well-understand that there might be any number of issues that cannot effectively be debated in the public, just because of the sensitive nature of the information that is being discussed.

But the model that the statute set up is one where discussions and the work of the committee is done in the public light. The FACA is part of the Government in the Sunshine laws, and that was one of its key provisions.

Chairman THOMPSON. And I see both points. Some of the information, obviously, because of whose hands it could fall in, would be not in our best interest. But to some degree, a lot of the discussion could very well have a place in the public domain.

Mr. Beardsworth, in your experience with DHS and helping facilitate setting up that department, did you work with advisory committees specifically?

Mr. BEARDSWORTH. Sir, I worked specifically with two advisory committees during my tenure at the department. One was the Homeland Security Advisory Committee that I mentioned, where I was both an observer and a contributor, subject-matter expert and a consumer. And the other one was the Office of State and Local Training Advisory Committee to the Federal Law Enforcement Training Center.

In terms of setting up the department itself, I did not work with any FACs, that I can recall.

Chairman THOMPSON. OK. Do you see a value in advisory committees to the department?

Mr. BEARDSWORTH. Yes, sir, absolutely, without a doubt.

And in my capacity, particularly, just to take as an example the critical infrastructure report and the discussion on resiliency that came out of that. Like Jeff, I would like to see some of the recommendations implemented, but I think there is a value in the discourse. A year and a half ago, when we started thinking about these issues, nobody was talking about resiliency. And we have managed to move the dialogue along in that area. And I think that is true in some other areas as well.

Chairman THOMPSON. Mr. Berkeley, in your experience, were you comfortable with what you have seen as the result of your work being seriously considered by the department?

Mr. BERKELEY. Mr. Chairman, I have been amazed at how much of our deliberations and considerations have been incorporated in other work and in other discussions. We get a report at the end of each of our meetings, not on a quantitative basis, but on a qualitative basis, about what has happened to our reports.

We had Admiral Vanderwagen from the Public Health Service at our last meeting, talking about how our pandemic report was finding legs in the HHS arena, not only for how the country might want to deal with avian flu vaccine but for other diseases as well.

We, as I mentioned in my oral comments, we have found our work on sector coordination and the subtleties of having some very organized private-sector groups, like railroads, who are extremely organized on a national basis, have to coordinate every day, and the apartment industry, which is at the other end of the spectrum, locally owned in many cases, not well-organized at a national level—how do we interface a set of government agencies with all of those? That work was all about making sure there wasn't a one-size-fits-all approach to the game.

So we were very happy to see those ideas built in. We were very happy to see the risk-adjustment thinking built in to the National Infrastructure Protection Plan. So the answer to your question is, yes, I have been very impressed with that.

Chairman THOMPSON. Thank you very much.

Mr. Green, we are going to go to you.

Mr. Shays, did you—oh, OK, you are back.

We will now yield 5 minutes to the gentleman from Connecticut.

Mr. SHAYS. Thank you.

Mr. Gaynor, in your statement, on page nine, you recommended imposing a reporting requirement on DHS regarding advisory committee recommendations that would involve GAO and the inspector general. Are you aware of any other department or agency in the Federal Government that has such a reporting requirement?

Mr. GAYNOR. No, sir, I don't.

Mr. SHAYS. You need to use your mike, sir.

Mr. GAYNOR. No, sir, I don't.

Mr. SHAYS. OK.

Mr. GAYNOR. That recommendation was basically based on what I have seen and how—

Mr. SHAYS. No, it doesn't mean it is not a good idea. I just was curious if you—

Mr. GAYNOR. Yes, sir.

Mr. SHAYS. Let me ask you another question. Based on your experience, do you think DHS does an adequate job generally of considering recommendations from the advisory committees? Do you believe a lack of adopting recommendations is an accurate measure of an advisory committee's effectiveness?

Mr. GAYNOR. Well, sir, it depends on the gravity of the recommendation.

With the Critical Infrastructure Task Force report, we basically offered a recommendation that changes the way that we look at national preparedness to one that is objectively measurable. If I was to ask you how much protection is enough, it is a tough question; you can't answer that one. But if I were to ask you how long you could do without it, that you are pretty certain to know.

Mr. SHAYS. Let me ask you—

Mr. GAYNOR. So on big issues, really tough, really tough. But on smaller issues—

Mr. SHAYS. Let me keep going here. Sorry, I don't want to drag it out here.

Mr. Beardsworth, the same question.

Mr. BEARDSWORTH. I am smiling because—

Mr. SHAYS. Use your mike.

The question I asked is: Do you think DHS has done an adequate job generally of considering recommendations from its advisory committees? And second, do you think that a lack of adopting recommendations is an accurate measurement of the effectiveness of an advisory committee?

Mr. BEARDSWORTH. I will probably get myself in trouble. I am smiling because I would be terrified if we adopted every recommendation that came out of every committee.

Mr. SHAYS. Right.

Mr. BEARDSWORTH. So, no, I don't think that is a good measure.

Whether the department is adequately implementing it, the short answer is probably no, but there is a big "but" behind that, in that there are a lot of issues that the department is dealing with, and I think they are probably, across the spectrum of issues, things that we could use more resources in implementing.

Mr. SHAYS. OK.

Let me ask you, Ms. Weismann, in your testimony, on page two, you state that the advisory committees DHS created are often "mouthpieces for an agency's predetermined agenda." Yet many of the advisory committees DHS currently oversees were established long before DHS was created in 2003, and many were established by Congress.

What specific advisory committees are referring to, and which ones would you recommend be consolidated or terminated?

Ms. WEISMANN. I apologize, sir. I am not sure that my testimony was intended to, in that aspect, reflect specifically what is going on at DHS. It is just a more general observation that we and others have had about how advisory committees often function, government-wide.

I mean, we have some of the more, you know, flagrant examples of that. And I think it reflects why the public accountability provisions are so critical. You know, there was so much controversy, for example, over the energy task force that the White House set up

and the fact that it seemed to be getting advice almost exclusively from industry representatives.

And the end result of that, whether or not you agree with this country's energy policy, I think is a lack of public confidence in the products of advisory committees.

Unfortunately, we just don't have the resources to examine in greater detail the specific advisory committees that are going on at DHS. I wish that we did. I think it is important for outside watchdog groups like us to keep abreast. But their number is so big that we can't. And, as I said—

Mr. SHAYS. Let me just get to the next—

Ms. WEISMANN. I am sorry.

Mr. SHAYS. That is all right. It is just that we are only doing 5 minutes right now.

You give the impression that you think sometimes that these advisory committees are rubberstamps. And yet, we have had testimony today that there is really a question that a lot of recommendations are not being implemented, which makes it sound like, in particular, the department is not a rubberstamp.

Which way do you come in the balance here? Are they implementing enough, or are they implementing too much? And are the advisory committees being too much a rubberstamp for what the department ultimately does?

Ms. WEISMANN. Well, sir, I am not prepared to say that any of the specific advisory committees that have been discussed by these panelists have been inappropriate or ineffective. I think it is too often a tendency, though, that we see in agency committees.

I think, ultimately, though, the measure of a committee's effectiveness can't just be on what the final outcome is. And I would agree, I think, with the other panelists here who have suggested that that isn't the best measure of a panel's effectiveness.

And, again, I don't want to consume your time, but I want to stress that one of the keys here is public confidence. Whether or not, you know, the ultimate recommendation of a committee is a good one or not a good one or should or should not be incorporated, I think it is imperative, when these committees are doing such important and substantive work, that the public have confidence that it is the product of a broad range of viewpoints.

Mr. SHAYS. Thank you.

Mr. Chairman, I am wondering, could I have 2 more minutes just to—

Chairman THOMPSON. Sure.

Mr. SHAYS. Thank you, Mr. Green, for not objecting to that.

Mr. Berkeley, in your opinion, what factors are the most critical in ensuring that the National Infrastructure Advisory Council is successful?

Mr. BERKELEY. Well, I think that the most critical function is leadership, both at the—

Mr. SHAYS. Is your mike on?

Mr. BERKELEY. I am sorry.

Mr. SHAYS. You guys seem to not want to use the mikes.

[Laughter.]

Mr. BERKELEY. I apologize.

Mr. SHAYS. And I think this is the Un-American Activity Committee's hearing room in past years, sir.

[Laughter.]

Mr. BERKELEY. I think that the absolute most critical thing in making these committees work is the leadership. And it is on two dimensions.

One is the chairman of the committee itself. In our case, we have been lucky to have Erle Nye, who is a very sophisticated, balanced, probing, curious fellow, who has done a great job.

And second, I think the fact that we have had a lot of attendance at our meeting by Secretary Chertoff, Secretary Leavitt, Assistant Secretary Stephan, at a high level—we have had multiple meetings with the president himself—that energizes the group to really want to do your best.

Mr. SHAYS. Sure.

Let me ask you this. There are some who argue that if an advisory committee does not produce a significant number of recommendations, then the advisory committee is basically underperforming or nonperforming.

One, do you agree? And second, are there other benefits that are derived from the work of an advisory committee besides recommendations?

Mr. BERKELEY. Yes, I don't think that position makes sense at all. Advice is all about judgment and all about quality; it is not about quantity.

The—

Mr. SHAYS. Keep going.

Mr. BERKELEY. I have forgotten the second part of your question.

Mr. SHAYS. And I am just asking, is there some other work besides recommendations that advisory committee do?

Mr. BERKELEY. Yes, I think one of the most interesting things is the energy that people like myself and the pride we take in being part of these advisory committees develop when you go back into your own community. I think it actually creates the sense in people that there is access for citizens to participate, and it does get down to the grassroots. And, you know, I love chatting about what we do on our committee when we are having dinner with friends or whatever. It is very energizing.

Mr. SHAYS. Thank you all, all four of you.

And thank you, Mr. Chairman, for extending my time.

And, Mr. Green, thank you.

Chairman THOMPSON. Thank you very much.

We will now yield 5 minutes to the gentleman from Texas, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman.

And thank you, Congressman Shays. And if you need more time, I will gladly yield. Thank you.

And thank you, friends, members of the panel, for being here.

I will start with Ms. Weismann, something that you said, and I will paraphrase, perhaps not be as articulate as you have been, but I would like to say it in another way: It is not enough for things to be right; they must also look right.

And it probably doesn't look right if you are going to resolve a consumer concern and you only hear from industry. Somehow the

public might conclude that you have acquired enough intelligence from consumers. So if your advisory committee is going to write rules to help consumers or do something to help them, and you only hear from the industry that provides a service, you probably haven't done enough.

To this end, I would like to just visit quickly with reference to the diversity of the committees, because I think that is important. And I believe it has been discussed previously, but diversity in terms of industry versus labor, versus consumers on the committees. Diversity of opinions, in my opinion, will lead to better conclusions in the final analysis.

So the question that I have, Ms. Weismann, given that you made some comments that intrigue my thinking, how have you evaluated, to some extent, the diversity that you see on advisory committees or the advisory committee process, those that you have had a chance to review?

Ms. WEISMANN. Thank you, sir. I think that that is often an area where advisory committees fall short. And I think it is often a failure on the part of the committee and the agency to appreciate what the fair balance requirement really means.

The example you gave of an advisory committee addressing a consumer issue and lacking representation from consumers is exactly the answer that the legislators gave when they enacted FACA and when they put in the fair-balance requirement. That is precisely what they were looking at: the fact that it is not enough just to get experts in the field, but that really these advisory committees should be the product of a whole range of viewpoints.

And in this day, on the kinds of issues that these committees are looking at, that means, you know, consumer groups in some instances, and it also, I believe, does get into issues of ethnicity and range of different backgrounds, because that is how you get the best product.

Mr. GREEN. Thank you very much for your candid response.

Let's just hear from Mr. Gaynor. Do you have comments that you would like to make, with reference to the concern?

Mr. GAYNOR. Well, sir, in my time on the HSAC, the spectrum of people who were on the HSAC and the senior advisory committees that are subordinate to it are so broad. They come from all sectors of the population. So I haven't—

Mr. GREEN. Let me ask this, Mr. Gaynor, on the question of the broadness. Let's talk about the leadership, something that was mentioned just a moment ago, how important that leadership is.

Diversity within leadership is also important. So you can have diversity among membership, but then the question becomes, is the leadership also equally as diverse?

Have you had an opportunity to see diversity in leadership?

Mr. GAYNOR. On the HSAC—I am going through the senior advisory chairs—

Mr. GREEN. How many have been female?

Mr. GAYNOR. One. The Private-Sector Senior Advisory Committee had a female chair.

Mr. GREEN. Of how many now?

Mr. GAYNOR. Out of—

Mr. GREEN. Of how many chairs?

Mr. GAYNOR. Out of five chairs.

Mr. GREEN. How many of some ethnic minority?

Mr. GAYNOR. Good question, sir. I can think of one.

Mr. GREEN. All right.

Let's hear from Mr. Beardsworth.

Mr. BEARDSWORTH. In terms of diversity of background, in the committee that I chaired, which is the Office of State and Local Training for the Federal Law Enforcement Training Center, the positions in the charter were established as being diverse as to where the people came from and what their backgrounds were. So that was very diverse in terms of background and representation.

In terms of racial diversity, I am not prepared. I would have to go back and look at my notes on that. It has been some time.

Mr. GREEN. All right. Let me just ask a final panelist, as my time is expiring.

Leadership, as well as the followship?

Mr. BERKELEY. Yes, we have a little bit different model in the NIAC, because we actually rotate leadership according to the task that is being done.

And I just grabbed these reports. This one was chaired by Ms. Katen from Pfizer. This one was co-chaired by Margaret Grayson and Greg Peters. John Thompson and John Chambers co-chaired this. John Thompson is African-American, CEO of Symantec. Rebecca Denlinger, who is the fire chief in Cobb County, and Martha Marsh, who runs Stanford University Hospital, co-chaired this one.

So we—

Mr. GREEN. One final question, if I may. Now, let's talk about diversity of background, something that Ms. Weismann has so eloquently addressed, and judiciously addressed, I might add. If all of the persons are from industry, do you really get the diversity you are looking for? So give me some thought on that, please.

Mr. BERKELEY. Well, in our particular case, we are typically giving advice on that interface between government and the private sector relating to 17 specific industrial sectors of the economy. And, by and large, all of the members of this group are CEOs of companies.

Mr. GREEN. Mr. Chairman, could I ask one additional question?

Chairman THOMPSON. Yes.

Mr. GREEN. Not being there and looking at this from afar, I can still, in some vista of my mind, see a need for an opinion that is from without the industry. It just seems to me that that would be a benefit. Has that ever been discussed, the possibility of getting one other source of opinion?

Mr. BERKELEY. Yes, sir. I actually have a statistic that I didn't realize I would find so useful. We have had 491 different people come participate with our working groups in developing our recommendations. And they have been people from all sorts of walks of life, relating to individual projects we are working on.

Mr. GREEN. Thank you, sir.

Thank you, Mr. Chairman. You have been very generous. I yield back my time.

Chairman THOMPSON. Thank you very much.

Mr. Shays, do you have another question?

OK. We would like to thank our second panel of witnesses for their testimony. And, as you know, we are trying to look specifically at DHS's advisory committees and their role to make sure that they in fact do what Congress intends for them to do. So we thank you for your testimony, and if there are any follow-up questions, staff will be in touch.

Thank you very much. The hearing is adjourned.

[Whereupon, at 11:58 a.m., the committee was adjourned.]

Appendix: Additional Questions and Responses

QUESTION FROM THE HONORABLE BENNIE G. THOMPSON, CHAIRMAN, COMMITTEE ON
HOMELAND SECURITY

RESPONSE FROM RANDY BEARDSWORTH

Question: In your experience, how familiar were DHS personnel and Senior Leadership with the Department's Federal Advisory committees? Did that familiarity influence the way the advisory committees were utilized, or underutilized? Please explain.

Response: The leaders within the department who had responsibility for a particular advisory committee were certainly familiar with that committee, and considering a number of factors including history, composition, purpose of the committee, etc., generally used the committee appropriately. With regard to the broader question, particularly as it applies to the Homeland security Advisory Committee, senior leadership was very familiar with the committee and the committee's members. This familiarity did influence how and to what extent the committee was used. In my observation, Secretary Ridge used the committee in a way that best met his needs, and Secretary Chertoff did likewise.

QUESTIONS FROM THE COMMITTEE ON HOMELAND SECURITY

RESPONSES FROM DOUG HOELSCHER

Question 1: What specific guidelines and criteria are used by your Office to evaluate DHS Federal advisory committees?

Response: As each committee's charter is renewed (or a new discretionary committee proposed for establishment), the continuing need for the committee must be clearly explained. The head of the committee's sponsoring component must provide to the Secretary an explanation of the committee's value to the program office and why the committee is essential to the conduct of the component's business. The component head must explain why the advice or information obtained from the committee is not available from within the agency or Federal government and cannot be obtained by other means, such as use of an existing committee, hiring a contractor or employee, or conducting a public hearing. Committees are terminated when they have completed their mission or they are no longer carrying out the purpose for which they were created.

Additionally, during the Annual Comprehensive Review at the end of each fiscal year, each committee must provide an explanation of how the committee accomplishes the purpose for which it was established, how it balances membership, the frequency and relevance of meetings, and why the advice obtained from the committee cannot be obtained through other means. Responses to these questions also include examples of information or advice provided by the committee during the past fiscal year and how the advice has incorporated into department policy or regulations. In short, we examine concrete policy improvements.

Question 2: What is Mr. Chertoff's and Mr. Jackson's specific involvement with DHS Federal advisory committees?

Response: Secretary Chertoff and Deputy Secretary Jackson have had very positive interactions with several DHS advisory committees. Through these interactions they have received sound advice and strengthened relationships with our various partners. Secretary Chertoff and Deputy Secretary Jackson have participated in meetings of the Homeland Security Advisory Council (HSAC), National Security Telecommunications Advisory Council (NSTAC), National Infrastructure Advisory Council (NIAC), Data Privacy and Integrity Advisory Committee (DPIAC), and the Committee on Commercial Operations of the Customs and Border Protection and Related Functions (COAC). In total the Secretary and Deputy Secretary have had

20 formal interactions with these advisory committees. They have also interacted informally on numerous occasions with advisory committee members.

Question 3: What mechanism, if any, does DHS rely upon to ensure that the composition of its Federal advisory committees are balanced in terms of viewpoint?

Response: The Federal Advisory Committee Act (FACA) requires that “the membership of the advisory committee. . . be fairly balanced in terms of points of view represented and the functions to be performed by the committee” [FACA, sections 5(b)(2) and (c)]. DHS has standardized the format and information required for the charters of its advisory committee. Each charter is required to set forth the specific membership composition relative to the function of the committee. As candidates are forwarded to the Secretary for appointment, the program office provides an explanation of each candidate’s qualifications for the position to which they are being recommended.

Each committee has different needs and is therefore analyzed individually. Once the purpose of the committee is clearly understood, then the Department seeks diverse input from those individuals with relevant experience to serve. A few examples of considerations used to promote balance are large versus small operators, practitioners versus academics, owners versus employees, regional diversity, and ethnic and gender diversity.

Moreover, in October, 2004, the Committee Management Officer (CMO), in consultation with the DHS Designated Agency Ethics Official (DAEO), initiated a review of the member designations of each committee to assure the members were appropriately appointed as Representative members, Special Government Employees, Ex-officio members, or Regular Government Employees. The reviews occurred either as candidates were recommended for appointment or charters were renewed. Committee charters reflect member designations.

Question 4: What specific reviews, if any, does the CMO conduct to evaluate DHS Federal advisory committees? Please describe.

Response: The CMO performs several reviews to ensure FACA compliance and efficient operations of our committees. Examples of reviews performed include:

- Review charter renewals and establishments for Department-wide standardization and FACA compliance. Component head charter justifications include concrete examples of how the committee has added value and verification that other avenues to receive similar advice are not more cost-effective or available by any other means.
- Review closed meeting Federal Register notices and monitor timely publication of meeting notices.
- Review FACA database reporting. In the last year, we have improved standardization of committee meeting and recommendation reporting, clarified terminology, and improved auditing of FACA database entries.
- Review committee charters and membership packages to ensure diversity of viewpoints in membership.

Question 5: Aside from the minimum standards indicated in the Federal Advisory Committee Act, what additional minimal requirements, if any, has DHS implemented for its Federal advisory committees?

Response: The bedrock of relevant standards comes from FACA. The role of the Committee Management Officer (CMO) is to monitor FACA-compliance, establish policies and procedures governing the use of FACA committees, and provide guidance to committee Designated Federal Officers (DFOs) and their staffs. Expansion beyond those responsibilities goes beyond the scope of the Committee Management Office mandate and available resources.

Question 6: What specific process will be used to track, record, and review and possibly implement DHS Federal advisory committee recommendations?

What is the timeline for implementing this process?

Response: Tracking recommendations is a Designated Federal Officer (DFO) responsibility. We recently worked with each DFO to ensure that committee recommendations are being tracked and that committee staff communicate implementation feedback to their members. Each DFO is best positioned to track recommendations and their implementation because they know their committee members best, they understand their committee’s policy intricacies thoroughly, and they have already established feedback mechanisms with which their committee members are comfortable. The CMO will continue to work with DFOs to ensure adequate recommendation follow-up, including review of implementation information in the FACA database.

Question 7.: FACA data indicate that several DHS Federal advisory committees meet infrequently and/or rarely produce recommendations. However, DHS renews the charter of those very Federal advisory committees. Please provide the justification for renewing the charters of under/nonperforming DHS Federal advisory committees.

Response: In Fiscal Year 2006, DHS advisory committees held 106 meetings showing a high-level of activity. In the July 25, 2007, hearing I gave several concrete examples of how several DHS advisory committees have added value by empowering our partners and improving our policies. No charter is renewed without adequate justifications. The FACA database provides one avenue to measure committee activities. In reviewing the information in the "Performance measures" section of database, we have recognized that there was variance in how recommendations were recorded, due to differing interpretations of desired inputs. We are taking steps to clarify and standardize DHS's reporting in the GSA database.

While the number of recommendations can be quantified, a number in a database does not capture the quality or depth of the recommendations. The dialogue between affected partners and the Department, and the openness of the committees, provides unparalleled insight into government activities.

The only committee that can be categorized as an under-performing committee is the Great Lakes Pilotage Advisory Committee. We previously communicated to House Homeland Security Committee staff the need for legislative amendments to allow this committee to better function. Specifically, we outlined the need to relax the membership selection requirements.

QUESTIONS FROM THE HONORABLE BENNIE G. THOMPSON, CHAIRMAN, COMMITTEE ON HOMELAND SECURITY

RESPONSES FROM ANNE WEISMANN

Question 1.: The Department of Transportation uses a form to gather data on diversity of its advisory committee members. Do you think that this kind of information should be gathered by all agencies? Are there privacy concerns that should/could prevent the collection of such information?

Citizens for Responsibility and Ethics in Washington ("CREW") supports the practice of the Department of Transportation to gather data on diversity of its advisory committee members and believes that all agencies should gather this kind of information. The Federal Advisory Committee Act ("FACA") mandates that membership of advisory committees be "fairly balanced." 5 U.S.C. App. §§ 5(b)(2) and (c). It is difficult for Congress and the public to monitor an agency's compliance with this statutory requirement without the kind of data that the Department of Transportation gathers. We know of no privacy concerns that would prevent the collection of such information, particularly if it were used by the agency to generate statistical data that did not identify individual members by name.

Question 2.: You have expressed some concerns that advisory committees merely "rubber-stamp" policies that the agency wants to implement and that Federal advisory committees are oftentimes only a "mouthpiece" for their agency. What specific safeguards would you recommend to prevent this kind of activity?

The danger that advisory committees will serve merely as a "mouthpiece" for agencies that have pre-determined the outcome of the committees is particularly acute where the advisory committees lack balance, there is insufficient agency screening for conflicts of interest and the committees do not comply with the FACA's open-meeting requirements. When an agency is allowed to co-opt the federal advisory committee process by stacking advisory committees with members who share a single viewpoint the result too often is that the committee is inappropriately influenced by the agency—a result that is directly contrary to the congressional intent behind the fair balance requirement of the FACA.

The FACA itself has safeguards intended to prevent advisory committees from becoming mere mouthpieces, such as the fair balance requirement and the requirement that committee meetings be open to the public. Nevertheless, the problem still arises because agencies do not sufficiently enforce those requirements and the public is unaware of the problem until the agency acts on the committee's recommendations, at which point it is often too late to effectively redress the problem. We therefore recommend that there be greater reporting requirements within agencies, including the requirement to report with greater specificity and make public the financial interests of each proposed committee member. We also recommend that each agency have a central office or individual responsible for ensuring agency-wide

compliance with the FACA, that this office or individual have responsibility for responding to public questions or concerns about any particular advisory committee and that this office or individual serve as a repository for committee documents, including conflict-of-interest documentation. We also recommend that strict conflict-of-interest provisions be enacted that would prevent committees being staffed by members who have financial interests in the outcome of the committee's recommendations. The energy task force established by the president and chaired by the vice president represents a particularly egregious example of the harm that results when committees operate in the dark and get input only from industry representatives who stand to gain financially from the committee's output.

Question 3.: What specific changes to FACA would you recommend? Please explain.

We recommend that the FACA be amended to provide that subcommittees and other working groups that are tasked by an advisory committee to do the work of or assist the committee are also subject to the requirements of the FACA. Currently subgroups are not considered to be subject to the FACA, meaning that they can meet in secret with no public access to their work. For example, regulations from the General Services Administration, the agency charged with providing government-wide guidance on the FACA, provide that "[i]n general, the requirements of the Act and the policies of this Federal Advisory Committee Management part do not apply to subcommittees of advisory committees that report to a parent advisory committee and not directly to a Federal officer or agency." 41 C.F.R. § 102-3.35. This is a huge loophole that agencies have exploited to the detriment of the public and contrary to the purpose of the intent of the FACA. Congress should plug this loophole by making clear that the FACA's provisions apply to any committee or group that is charged not only with making recommendations directly to the agency, but also to those charged with assisting any advisory committee and providing input on the nature and substance of any committee recommendations.

In addition, as discussed above, the FACA should be amended to add stringent conflict-of-interest screening requirements that ensure not only fair balance in an advisory committee's membership, but also that no member of a committee or the employer of any committee member has a direct financial stake in the outcome of any committee recommendations. Such conflict-of-interest requirements should extend to any member of a subcommittee tasked to do any work of or assist any advisory committee. To the extent an agency cannot find advisory committee members that would meet the conflict-of-interest requirements because of the limited pool of experts in any given area, the Act could provide for exemptions on a case-by-case basis or, alternatively, provide that such members are to be treated as special government employees subject to the conflict-of-interest provisions found at 18 U.S.C. § 208.

A third change CREW recommends is that the FACA be amended to make clear that any interested member of the public who seeks access to the papers of an advisory committee or seeks to attend any advisory committee meeting is within the zone of interests of the FACA's requirement of fair balance and has standing to sue to challenge the lack of fair balance of any advisory committee. The fair balance requirement of the Act, like the open-meeting and record disclosure provisions, is essential to meet the FACA's goal of making advisory committees accountable to the public. While courts have recognized the ability of a member of the public to sue to enforce the open-meeting and record-disclosure requirements, there is some doubt as to whether individuals can sue to enforce the fair balance requirement. In addition, the FACA should make clear that courts have jurisdiction not only to enjoin past agency violations of the FACA, but also to prevent future violations through appropriate injunctive or declaratory relief.

