

NATIONAL INFRASTRUCTURE ADVISORY COUNCIL

Meeting Minutes for the January 6, 2009 Meeting

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NATIONAL INFRASTRUCTURE ADVISORY COUNCIL

BUSINESS MEETING AGENDA

J.W. Marriott Hotel
Capitol Ballroom (Salons E & F)
1331 Pennsylvania Avenue, NW
Washington, DC 20004
January 6, 2009
1:30 PM – 4:30 PM EDT

- I. OPENING OF MEETING** *Nancy J. Wong, Designated Federal Officer (DFO), NIAC, Department of Homeland Security (DHS)*
- II. ROLL CALL OF MEMBERS** *Nancy J. Wong, DFO, NIAC, DHS*
- III. OPENING REMARKS AND INTRODUCTIONS** *NIAC Chairman Erle A. Nye, Chairman Emeritus, TXU Corp.*
- Robert D. Jamison, Under Secretary for the National Protection and Programs Directorate*

PARTICIPATING BUT NOT EXPECTED TO MAKE REMARKS:

Paul A. Schneider, Deputy Secretary, DHS (invited)

Scott Charbo, Deputy Under Secretary for the National Protection and Programs Directorate, DHS (invited)

Robert B. Stephan, Assistant Secretary for Infrastructure Protection, DHS (invited)

James L. Snyder, Acting Deputy Assistant Secretary for Infrastructure Protection, DHS

Kenneth L. Wainstein, Assistant to the President for Homeland Security/Counter

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Terrorism (APHS/CT), Homeland Security Council (*invited*)

Jason Brown, Senior Director for Cyber Security and Information Sharing, Homeland Security Council

IV. APPROVAL OF OCTOBER 2008 MINUTES

NIAC Chairman *Erle A. Nye* Presiding

V. WORKING GROUP STATUS UPDATE

NIAC Chairman *Erle A. Nye* Presiding

A. THE FRAMEWORKS FOR DEALING WITH DISASTERS AND RELATED INTERDEPENDENCIES WORKING GROUP

Edmund G. Archuleta, President and CEO, El Paso Water Utilities, NIAC Member, NIAC Member; *James B. Nicholson*, Chairman and CEO, PVS Chemicals, Inc., NIAC Member; and *The Honorable Tim Pawlenty*, Governor, The State of Minnesota, NIAC Member

B. ESTABLISHING A WORKING GROUP FOR THE CRITICAL INFRASTRUCTURE RESILIENCE STUDY

Wesley Bush, President and COO, Northrop Grumman, NIAC Member; and *Margaret E. Grayson*, (former) President, Coalescent Technologies, Inc., NIAC Member

VII. NEW BUSINESS

NIAC Chairman *Erle A. Nye*, Vice Chairman *Alfred R. Berkeley III*, NIAC Members

VIII. CLOSING REMARKS

Michael Chertoff, Secretary, DHS

Robert B. Stephan, Assistant Secretary for Infrastructure Protection, DHS

IX. ADJOURNMENT

NIAC Chairman *Erle A. Nye*, Presiding

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MINUTES

NIAC MEMBERS PRESENT IN WASHINGTON:

Mr. Alfred R. Berkeley III; Ms. Margaret E. Grayson; Mr. Gregory Peters; Mr. James A. Reid; Mr. Matthew Rose; and Mr. Michael Wallace.

NIAC MEMBERS ATTENDING VIA CONFERENCE CALL:

Mr. Erle A. Nye; Mr. Edmund G. Archuleta; Dr. Craig R. Barrett; Mr. Wesley Bush; Lt. Gen. (ret.) Albert J. Edmonds; Chief (ret.) Gilbert G. Gallegos; Mr. Phillip Heasley; Ms. Martha H. Marsh; Mr. Thomas E. Noonan; Hon. Tim Pawlenty; Mr. Bruce A. Rohde; Dr. Linwood H. Rose; and Mr. John Williams.

MEMBERS ABSENT:

Mr. George H. Conrades; Mr. D.M. Houston; Commissioner Raymond W. Kelly; Mr. Greg Wells; and Ms. Martha Wyrsh.

SUBSTANTIVE POINTS OF CONTACT PRESENT IN WASHINGTON:

Ms. Pat Andrew (for Ms. Margaret Grayson); Mr. Bill Muston (for Chairman Nye); Dr. Ronald Luman (for Vice Chairman Berkeley); Mr. Gerald Buckwalter (for Mr. Wesley Bush); Mr. David Hoffman (for Dr. Craig Barrett); Mr. Kevin J. Nietmann (for Mr. Mike Wallace); Mr. Jason Rohloff (for Gov. Tim Pawlenty); and Mr. Vance Taylor (for Mr. Archuleta).

SUBSTANTIVE POINTS OF CONTACT ATTENDING VIA CONFERENCE CALL:

Ms. Frances Paulson (for Mr. Bronczek); Mr. Bill Fisher (for Mr. James B. Nicholson); Mr. Tim Scott (for Mr. David Kepler); and Mr. Rob Clyde (for Mr. John W. Thompson);

OTHER DIGNITARIES PRESENT:

Mr. Jason Brown, Cyber Security and Information Sharing, Homeland Security Council; Mr. Eben Carle, Cyber Security and Information Sharing, Homeland Security Council; Mr. Robert D. Jamison, Under Secretary, DHS; Col. Robert B. Stephan, Assistant Secretary for Infrastructure Protection, DHS; MG James L. Snyder, DHS; Mr. R. James Caverly, Director, Partnership and Outreach Division (POD), and Ms. Nancy Wong, DFO, NIAC, DHS.

OTHER DIGNITARIES ATTENDING VIA CONFERENCE CALL:

Michael Chertoff, Secretary, DHS.

I. OPENING OF MEETING

Nancy J. Wong, DFO, NIAC, DHS

Ms. Nancy Wong introduced herself as the DFO for the NIAC. She then welcomed Mr. Erle Nye, NIAC Chairman; Mr. Alfred Berkeley, NIAC Vice Chairman; Under Secretary Robert D. Jamison; Assistant Secretary for Infrastructure Protection Robert Stephan; Acting Deputy Assistant Secretary James L. Snyder; Mr. Jason Brown, Senior Director of Cyber-Security and Information Sharing at the Homeland Security Council in the White House; and all of the members of the council and other federal government representatives present and on the teleconference.

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Ms. Wong noted that Secretary Michael Chertoff would participate telephonically in the meeting at 3:00 p.m. She also extended a welcome on behalf of DHS to members of the press and the public attending this meeting.

Ms. Wong stated that the NIAC is a presidential advisory committee created by Executive Order 13231 and amended by Executive Order 13286, Executive Order 13385 and Executive Order 13446. The NIAC is composed of members appointed by the President representing each of the critical infrastructure sectors designated by Homeland Security Presidential Directive 7 (HSPD-7) and equivalent representatives from academia, State and Local government. The Council provides the President and the Secretary for Homeland Security with advice on the security of cyber and physical critical infrastructure and key resources and a partnership between public and private sectors to support this national mission.

During its seven (7) year history, this Council has conducted extensive studies for both public and private sectors by advising the President and other federal officials on matters ranging from public-private partnership policies and strategies, securing national infrastructure, how cyber and physical infrastructure issues are converging, response and recovery, risk assessments, information sharing, and a model for evaluating appropriate government intervention.

Pursuant to her authority as DFO, Ms. Wong called to order the NIAC's 26th meeting and first meeting of 2009.

II. ROLL CALL

Nancy J. Wong, DFO, NIAC, DHS

After bringing the meeting to order, Ms. Wong called roll.

III. OPENING REMARKS AND INTRODUCTIONS

*NIAC Chairman Erle A. Nye,
Chairman Emeritus, TXU Corp.*

Chairman Nye thanked Ms. Wong and all the members for being present, Stating that he was pleased so many representatives of the Council were present in Washington, D.C. or participating via teleconference. Mr. Nye welcomed the various members of the Administration, including Under Secretary Jamison, Assistant Secretary Robert B. Stephan, and other guests present.

IV. APPROVAL OF JANUARY 6, 2009 NIAC MEETING MINUTES

*NIAC Chairman Erle A. Nye,
Chairman Emeritus, TXU Corp.*

Chairman Nye moved to approve the minutes of the October 14, 2008 meeting. During that meeting, Vice Chairman Al Berkeley and Ms. Peg Grayson and Chief Gil Gallegos presented for approval the Critical Infrastructure Partnership Strategic Assessment Study, which was approved for publication; and, a report on the Frameworks Study from Governor Pawlenty, Mr. Ed Archuleta and Mr. Jim Nicholson. A Council member moved to approve the minutes; the motion received a second; and the motion passed unanimously.

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V. WORKING GROUP STATUS UPDATE

NIAC Chairman *Erle A. Nye*
Presiding

Next, the NIAC received a status update from the Framework for Dealing with Disasters and Related Interdependencies Working Group, presented by the Working Group's Chairs, Governor Tim Pawlenty, Mr. Ed Archuleta and Mr. Jim Nicholson.

A. THE FRAMEWORKS FOR DEALING WITH DISASTERS AND RELATED INTERDEPENDENCIES WORKING GROUP

Edmund G. Archuleta, President and CEO, El Paso Water Utilities, NIAC Member, *James B. Nicholson*, Chairman and CEO, PVS Chemicals, Inc., NIAC Member; and *The Honorable Tim Pawlenty*, Governor, The State of Minnesota, NIAC Member

Gov. Pawlenty opened the presentation by thanking Chairman Nye for the opportunity to update the NIAC, noting that the work had been coming along nicely. Before presenting the activities, key findings and recommendations of the Working Group, Gov. Pawlenty thanked the Co-Chairs, Mr. Jim Nicholson and Mr. Ed Archuleta. Gov. Pawlenty also thanked the Johns Hopkins University and their Applied Physics Laboratory, specifically Dr. Ron Luman, Ms. Robin Holliday, Mr. Judson Brown, and Mr. Brian Tishuk, for their support and facilitation of the one-day workshop related to the study which helped to identify the issues and get the Study Group to where it is today. Gov. Pawlenty also mentioned that the NIAC and homeland security staff, including Mr. Bill Radcliff, Mr. Craig Bamberger, Mr. Michael Schelble, and Mr. Jim Caverly had done a fantastic job in supporting the work of the Study Group.

Gov. Pawlenty began the presentation with an overview of the study, covering the study objective, scope, and approach. The Study objective was to assess the ability of the United States to respond to and recover from a major disaster that could result in a prolonged loss of infrastructure expanding beyond a localized area. The desired outcome of the study was to identify the main impediments to the recovery of critical infrastructures by the private-sector and local- and state-government, as well as the interplay between these entities, and the deployment of federal resources to the affected disaster areas.

The scope of the Study included all relevant sectors, including Critical Infrastructure and Key Resources (CIKR). The Study considered all levels of government, including tribal and territorial governments, and explored the challenges of a longer-than-typical CIKR outage in a metropolitan area.

The Study Approach, Gov. Pawlenty continued, began by conducting a series of interviews with CEOs and senior executives from select critical-infrastructure companies on emergency response and related issues. The Study also held a one-day disaster workshop that focused on two hypothetical scenarios: one being an accident of two-week duration in the D.C. area, the second being a terrorist incident of three-week duration also in the national capital region, not limited to Washington, D.C., but extending out into adjacent counties and beyond.

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Next, Gov. Pawlenty highlighted some of the key findings from the Study. The Study identified specific legal, regulatory and policy impediments that hinder CIKR recovery restoration operations. The Study noted that lengthy waiver processes and the lack of the availability of waivers, which are needed for a more effective response, may place private-sector entities and others in legal jeopardy for pursuing actions that benefit the common good. The Study also found that there is no systematic identification or cataloguing of legal, regulatory or policy impediments in this area. As a result, both the waiver and identification processes were found to be inadequate to a significant degree.

Other legal or regulatory policy impediments to CIKR operators during the disaster recovery include select environmental laws, vehicle weight restrictions, processes for waiver document filings and the like. The Stafford Act and Defense Production Act (DPA) also need to be addressed to be more responsible and relevant in these circumstances. A specific example of a regulatory limitation would be the prohibition on the transportation of chlorine between checkpoints during an emergency. Unavailability of chlorine could disrupt water supplies or the treatment of water.

The Study found that credentialing and access also remains a significant impediment. For CIKR recovery and restoration efforts, there is a continued lack of information, information-sharing, and coordination, particularly among private-sector partners. There are few actual exercises focusing on these types of recovery concerns and areas of focus, and private-sector partners are not routinely included in emergency operation centers. Though there are some examples of this occurring, they are not systematic.

The Study found that there is a lack of understanding in terms of depth of the impact of water and waste-water service disruption. Currently, water is not a separate Emergency Support Function under the National Response Framework. However, without wastewater services evacuations would be necessary, which could result in a dramatic change in behavioral patterns.

The Study found that there is a need to integrate the private sector into emergency planning processes. The private sector comprises 85 percent of the critical infrastructure in the country, yet they have not been included in the planning process to any significant degree.

Another key finding is that there is need for multijurisdictional decision-making and communication. Planning ahead of time with senior state leadership and in border states such as Minnesota or Texas, where issues affecting international jurisdictions may present themselves, is an important step in the planning process.

Next, Gov. Pawlenty highlighted potential recommendation areas from the Study. First, there is a need for a process to catalogue and identify legal, regulatory and policy impediments. The Study identified congressional actions that should be taken to address the policy impediments that were identified. The Study found that there is a need for improved private sector-government cooperation. There also needs to be a comprehensive effort by the federal, state and local major metropolitan areas to identify, ahead of time, the laws and regulations that may need

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to be suspended or modified during an emergency. These should be documented in an electronic catalogue format. Having this catalogue available would be a very helpful tool.

The Study found that it would be good practice to draft emergency-response orders ahead of time and even have model orders available. Waiver processes must also be made more user-friendly and timely in the context of an emergency.

In terms of the potential Congressional action, the Study found that the Stafford Act should be amended to allow federal funds to be used to restore privately owned infrastructure damaged in a disaster. The federal government also needs to review and modify the DPA to maximize the ability to respond to CIKR damages in an emergency. Gov. Pawlenty indicated that some of the challenges of the DPA were detailed in a 2004 review and the conclusions of which appear to not have been addressed which is disappointing and concerning. Similarly, the Study found that there was a June 2008 General Accountability Office report concluding that civilian agencies responsible for responding to domestic emergencies in the areas of civil transportation, health resources and food and agriculture resources have not developed or implemented policies relative to the DPA.

Many CIKR operators need waivers for document-filing deadlines with regulatory agencies during an emergency. Emergency planners need to address restrictions on chlorine transportation between checkpoints during an emergency. CIKR operators will require relief from environmental laws and other laws that affect the recovery efforts, and emergency planners need to identify actions to assist in expediting vehicle restrictions, driver hour limitations, road-weight restrictions, port access and other emergencies. Ideally, it would be useful to have those laws identified and orders drafted in mock form ahead of time.

The Study also recommends improved cooperation in disaster response and recovery. To begin, private-sector operators should be included in planning exercises, which is something that does not always occur. Also, an established form of sector-to-sector communication between CIKR operators in terms of business continuity would be helpful between the different sectors where that does not already exist. There is also an ability to leverage and make better use of the existing Information and Analysis Centers (ISACs).

Gov. Pawlenty stated that there is a need to continue to examine and identify key issues, and recommended areas with the SMEs for inclusion in the final study. The Working Group will draft results and recommendations and deliver the final report at the April 2009 meeting.

The Governor commented that a lot of good points that have come out of the Study, but some related work has been done in the past that has been ignored or follow-through has not occurred. Private-sector utility partners are critical to this process and potential response, but it appears that they have not had a full seat at the table, at least in terms of planning. The Study found that the work around identifying these impediments has not been sufficiently robust to identify and catalogue them in their entirety across federal, state and local jurisdictional lines. The Study recommends that the paper work needs to be done ahead of time to shorten the timelines for the waivers that need to be considered. The Study also indicated that the amendments to federal

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laws would be in the form of updating those laws in helpful ways to address some of these issues.

In closing, Gov. Pawlenty, acknowledged and thanked Jason Rohloff, director for the State of Minnesota's Washington, D.C., office for helping to coordinate this effort and doing most of the work behind the scenes. Gov. Pawlenty asked Mr. Rohloff if he had any additional comments or points of emphasis.

Mr. Rohloff responded by first thanking the Governor and the Chairman. Mr. Rohloff continued, acknowledging the tremendous amount of help and input received by many different players from each of the different critical sectors. Their input was critical to the recommendations included in the Study. Mr. Rohloff thanked all of the CEOs who participated in the interviews, on behalf of the Study Group. The interviews with the CEO's and their staffs were tremendously helpful, and gave the Study Group valuable insight that will be included in the findings and recommendations contained in the final report. Mr. Rohloff indicated that the report is in the process of being written now and, at the discretion of the NIAC membership, would be available to NIAC members to review. With that, Mr. Rohloff yielded the floor to the Chairman.

Chairman Nye thanked the Governor for his comments, and asked the Co-Chairs, Mr. Ed Archuleta or Mr. Jim Nicholson, if either of them had any comments to share.

Mr. Archuleta began by thanking the Governor for doing an outstanding job and summarizing the work of the committee. Mr. Archuleta indicated that the workshops and interviews suggested that there needed to be better coordination and communication, and that there were some impediments that need to be resolved. Mr. Archuleta stated that he was looking forward to finalizing the report and hoping that the recommendations are seriously considered and implemented in time.

Chairman Nye thanked Mr. Archuleta and asked Mr. Jim Nicholson if he had any comments to share. The Chairman then asked if any members present by phone or in person had any comments or questions on the material presented by the Governor.

Mr. Mike Wallace responded with a question and a comment for the Governor and the Working Group. Mr. Wallace asked if the group would comment on whether, in their view, they have covered the 18 sectors or if there were some sectors that needed to be contacted in order to be a part of the process. Mr. Wallace commented that some of the recommendations in the *Partnership Study Report* last fall went to the federal government, while others were directed to the private sector. Mr. Wallace asked if the Study is considering a similar approach to the recommendations.

Gov. Pawlenty responded by thanking him for his comments, noting that they were good points. The Governor asked Mr. Rohloff if he could give an approximation of whether all the CIKR sectors were covered or there were any remaining gaps.

Mr. Rohloff replied that all of the 18 sectors were included in the design of the study, but that the public health sector is currently outstanding. Mr. Rohloff added that the Study is currently trying

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to schedule a meeting with this sector, and hope to have that complete in the next few days. Mr. Rohloff stated that it would be terrific if DHS could coordinate some of the efforts that pertain to the action items for the private sector. Mr. Rohloff indicated that some coordination may already be underway, and that it is critically important they are involved in the process because, as mentioned earlier, the private sector comprises 85 percent of the critical infrastructure, and it is in the public's best interest for government to help the private sector with infrastructure issues.

Vice-Chairman Al Berkeley followed up by asking Mr. Rohloff how DHS coordinates with regard to the Katrina experience, the next hurricane season, or any of the coordination to which he had referred.

Mr. Rohloff answered that the Study suggests DHS take a look at this. Mr. Rohloff continued that the Study Group gathered from the interviews and the workshop that the private sector would like involvement in the planning process from beginning to end. The private sector is often invited to exercises and offers their comments, but they don't always get a clear picture of what that involvement means or how they could better contribute to the overall process.

Chairman Nye commented to Vice-Chairman Berkeley that he assumes that NIAC can count on DHS to help them with this question and deal with coordination.

Under Secretary Robert Jamison stated that there are valuable lessons that have come out in the preliminary findings and suggested that it is important that NIAC works with Federal Emergency Management Agency (FEMA) and DHS to figure out a way to more effectively integrate the private sector into the planning process. Under Secretary Jamison indicated that there are some recommendations that fall under ASIP Stephan's leadership. Under Secretary Jamison stated that he is looking forward to the final recommendations and in particular having more clarity on recommendations that were given in previous formats or forums that were not acted upon, and perhaps what the challenges or reasons behind why those were not taken under full consideration.

Chairman Nye thanked the Under Secretary, and asked if anyone else had a question or comment.

Vice-Chairman Berkeley asked ASIP Stephan if he could discuss the complexities associated with the transition between Administrations.

ASIP Stephan responded that Vice-Chairman Berkeley is in the same situation that they are in with regard to the Administration change. ASIP Stephan continued that there are a couple of opportunities before the report is finalized, the first being that there is great collaborative partnership underway with the exercise and training Working Group and contingency planning Working Group under the partnership for critical infrastructure security. Based upon an earlier study by the NIAC, that group self-formed many years ago and, in the past couple of years, they formed a very robust exercise planning and training Working Group that channels the private sector participation in contingency planning, as well as exercises, to include a recent tabletop exercise – the very first one all 18 sectors are participating across federal, state and local space as well as the private sector – to work through a very complex series of Improvised Explosive

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Device (IED) and suicide bomber attacks during the period of the inauguration in Washington, D.C., and other major cities. ASIP Stephan indicated that there is an after- action document from that encounter that he would like to share with the NIAC. ASIP Stephan continued that he would encourage deeper discussions with that group on some of the other initiatives that have taken place over the past couple of years, including a very important and comprehensive work-through of hurricane season 2008, beginning with the combined public and private-sector interaction before the advent of hurricane season. The group will walk the NIAC through the actions taken on the objective as they dealt with Gustav and Ike. ASIP Stephan continued that based upon hurricane season 2008, many of the issues that were raised are now well on the way to solution if, in fact, they have not yet been solved. ASIP Stephan also suggested interviews with individuals from the state and local government that supported infrastructure liaisons in the field, as well as private- sector elements that participated for the first time in hurricane season in the federal operation center in Washington DC, as well as elements that were brought into field operations in the impacted states. ASIP Stephan stated that this would round out the study and help to make sure that opportunities were not missed to expose the NIAC to some of the latest information that DHS has in this area.

Mr. Rohloff responded that the Study Group would welcome that input. Mr. Rohloff stated that the Study Group does not want to convey that efforts are not underway, but the group was strictly synthesizing common themes that they found from the interviews and the workshop up to that point, and acknowledged that there may be efforts that they do not know about and would be served well by hearing from ASIP Stephan's team.

Chairman Nye asked Vice-Chairman Berkeley if the response given sufficed and Vice-Chairman Berkeley responded affirmatively.

Mr. Matt Rose added that even though the study was based around the Electric Sector outage, the outcome had a strong correspondence to the rail sector as well. The conflicts between state, local and federal entities are enormous, and these conflicts are among the biggest challenges to the rail sector. Mr. Rose also supported Under Secretary Jamison's point that there was a big difference in the coordinated responses that occurred in the aftermath of Gustav and Ike and Katrina, but also stated that there is still a lot to be done, and it was a different game, with regard to planning for the rail sector.

Gov. Pawlenty responded to Mr. Rose, agreeing that this was a good point. The Governor said that the study wasn't limited to the Electric Sector; it was supposed to have impacts on telecommunications, water, and cascade to other sectors as well, but that the presentation did not go into that level of detail. Gov. Pawlenty stated that the federal, state and local interrelationship is concerning, and that the waiver and regulatory and legal process needs to be resolved, or a limited number of people should be able to declare a super-waiver, at least as it relates to people being criminally prosecuted. There comes a point in a disaster situation where time is of the essence, and things need to be up and running, especially if people are in danger in terms of their health, safety or welfare or missing critical infrastructure. Gov. Pawlenty added that his own personal observation that the President or a governor should have the ability to declare a super-waiver scenario, with perhaps some general limitations, without having to abide by the normal regulatory framework.

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Chairman Nye noted the Governor's point was well made and thanked Mr. Rose for his comment. Chairman Nye commented that he hopes the study can be broadly applied and asked if there were other comments or questions for the Governor and the Study Group.

Mr. Greg Peters asked the Study Group if any best practices were found regarding in-class training, or training in a real-time software-based environment. Mr. Peters also asked if there were best practices for distributing this information to other groups. For example, many lessons could be useful for other municipalities from the bridge disaster in Minneapolis.

Gov. Pawlenty replied that he could speak to the bridge incident, but asked Mr. Rohloff to first comment in terms of the workshop on best-practices reviewer identification.

Mr. Rohloff responded that the Study Group found that best practices are shared amongst each of the critical sectors. There is good communication within each of the sectors. Within the sectors, they know their colleagues and many of them have relationships with the important regulators, but the group found that there was little communication between the sectors, which is obviously very important. The primary focus of this study was to determine how one sector reacts to another action from another sector. The group observed that the cross-sector approach or communication could definitely be enhanced.

Chairman Nye commented that his personal experience suggests that Mr. Rohloff is correct. The sectors tend to be silos, and although there are some cross-sector activities, it would be helpful to focus even more on these activities.

Chairman Nye asked if there were any other questions or comments, hearing none, the Chairman thanked the Governor and the Study Group. The Chairman stated that they are looking forward to the report and hope to see it in April. The Chairman thanked the John Hopkins University Applied Physics Laboratory again, including Dr. Ron Luman, Jason Rohloff, and others for their participation. The Chairman indicated that he was encouraged by the quality of the work and thinks that this could be a major enhancement in response activities to events of this sort.

Before moving to the next agenda item, Chairman Nye introduced the government officials present at the meeting. The Chairman indicated that Robert Jamison, Undersecretary for the National Protection and Programs Directorate; Robert Stephan, Assistant Secretary for Infrastructure Protection; James Schneider, the Acting Deputy Assistant Secretary for Infrastructure Protection at DHS; and a representative from the White House, Mr. Jason Brown, the Director for Cyber-Security and Information-Sharing for the Homeland Security Council were all present at the meeting.

B. THE CRITICAL INFRASTRUCTURE RESILIENCE WORKING GROUP

Wes Bush, President and
COO, Northrop Grumman,
NIAC Member; and Margaret E.
Grayson, Principal,
Essential2Management LLC, NIAC
Member

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Next, Chairman Nye moved the meeting to the next agenda item: the establishment of an additional study. This Study was a recommendation from the Critical Infrastructure Partnership Study. Mr. Wes Bush volunteered to chair the Working Group along with Ms. Margaret Grayson; additionally, the group already has good representation from the Council's points of contact. The Chairman noted that since the Study had come together, the Council needed to approve it formally. Calling on Mr. Bush and Ms. Grayson, the Chairman asked if they had any comments.

Mr. Bush thanked Chairman Nye and apologized for not being physically present at the meeting. Echoing Chairman Nye, Mr. Bush thanked Ms. Grayson for co-chairing the Study and that he appreciated the broad participation from the NIAC membership and their representatives. Mr. Bush added that his point of contact, Mr. Jerry Buckwalter, will bring a wealth of experience to the Study.

Mr. Bush noted the existence of different perspectives and definitions for resilience across the different sectors of the critical infrastructure. Taken in the aggregate, the nation's critical infrastructures comprise a large, vital system of systems upon which everyone depends. Using the principles of this system's robustness, the aggregate resilience is the foundation necessary to allow the many different industries that make up the critical infrastructure to rely on the system's availability with different endeavors using it to architect big, complex tasks. Those principles create a framework to think about resiliency with one issue standing out: there is simply no way to afford, economically, to perfectly protect all the elements of the entire system. Therefore, in some way, it is important to make sure that it operates robustly by using the basic principles of redundancy, recovery, and interdependency. Mr. Bush added that there is a limited understanding of exactly how resilient the critical infrastructure would be if key elements are damaged in some way. The Resilience Study will look to earlier NIAC studies, for examples that will enhance the learning process of the resilience study. And through the conduct of the study, will develop a deeper understanding of the ability of the critical infrastructures to respond and recover in the face of a disaster. Through this learning, the NIAC will make recommendations that can enhance the resilience of the critical infrastructure. Mr. Bush finished, stating that he looked forward to getting the Study underway as well as broad participation on the Study.

His opening comments concluded, Mr. Bush turned the floor to Ms. Grayson and Mr. Buckwalter.

Ms. Grayson thanked Chairman Nye and Mr. Bush for his comments. Continuing, Ms. Grayson noted that the Resilience Study is a continuation of the study submitted last October—The Critical Infrastructure Partnership Strategic Assessment Study. The focus of that study was on the partnership associated with the protection of assets. The Working Group evaluated infrastructure protection strategies in each of the 18 critical infrastructure sectors, gathering input from many CEOs in the private sector to inform our study. Throughout that process the question of resilience and the ability of the Nation to respond in the face of a disaster came up late in the study. Looking at resilience, the Working Group realized that the question of resilience was much larger than the Study could do justice to if packaged with the Critical Infrastructure

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Strategic Partnership Assessment Study. That Working Group asked the NIAC for an opportunity to consider a study that focused on resilience itself. It is clear that there is no possible way to protect 100 percent of the Nation's assets even with the full cooperation of the government, the public sector, and the private sector. The question of resilience, the requirements for a resilient nation, and an understanding of what can be done to become more resilient are important for the Group to deliberate. In this Study, the objective of the Working Group is—to consider infrastructure resilience and conduct a study to focus on the role of resilience in response and recovery similar to the role of protection that was the focus of the Critical Infrastructure Partnership Assessment Study just completed. The major questions that are now framing the initial thinking are: how do we examine the infrastructure resilience strategies that are currently in place? What does the private sector do? What does the public sector do? How does the partnership work together to assure information sharing, knowledge transfer, and cooperation between the public and private sectors, so that the ability to respond and come back online very quickly after a disaster is a broadly understood, shared and practiced strategy? How is information shared so that people involved in both the public- and private-sector have their steps laid out with a plan that will allow them to recover?

A group met in December to work through the objective and the early-stage planning, led by Mr. Buckwalter, who will lead the Study Group. Ms. Grayson then asked Mr. Buckwalter to explain to the NIAC what has happened in this early-stage planning.

Mr. Buckwalter thanked Chairman Nye, Mr. Bush, and Ms. Grayson. He began by stating that one of the challenges is the broad and complex nature of the question. To develop a scope that will clearly define the objective and is attainable within the time frame and pertinent to the public/private partnership is challenging. The scope of the Study will address only the resilience of the critical infrastructures, and not that of the communities served by the infrastructures. While the latter is an important matter unto itself, an understanding of the resilience of the infrastructures is the focus of the recommendation of the previous study. Mr. Buckwalter added that the study will not include community or public-safety resilience, except as applicable to critical-infrastructure and key-resource resilience.

This Working Group will examine current Department of Homeland Security critical-infrastructure key-resource policies, which have elements of both protection and resilience, and evaluate those policies within the context of the partnership model. Following that, the Working Group will gather information to determine the appropriate role of resilience strategy within that partnership framework; specifically a strategy guided by a risk-balanced, risk-managed approach of protection and resilience combined. The Group recognizes there will be differing sets of balance points for different kinds of infrastructures and potentially different balance points for categories within infrastructures.

The Working Group will review and recommend resilience strategies, specifically for application to national critical infrastructure key-resource goals. An understanding and integration can streamline guidance to the private sector, recognizing that, at the departmental level, both the Department of Homeland Security and other federal agencies possess key goals that can be shared as they relate to resilience strategies, policies and procedures that are designed to

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integrate the goals and objectives of government agencies, private sector critical infrastructure partners and, as well as meet the goals established by the Administration.

Lastly, the Group intends to identify policy objectives from the perspective of the partnership that would result in improved resilience. Resilience will be enhanced through a three-pronged approach: first, the robustness and hardening of the infrastructure; second, the increased reliability, durability, or tenacity of the infrastructure; and lastly, the efficient and rapid recovery of damaged or compromised infrastructure and assets and functions. The study will gather information to test this premise and search for other best practices in operation and those that are needed to guide the recommendations.

Mr. Buckwalter added that, if the NIAC membership approved the Study's approach as presented, then the group will move quickly to establish a Study Group with all the appropriate subject-matter expertise and industry infrastructure representation under the guidance of the Working Group co-chairs, Mr. Wes Bush and Ms. Margaret Grayson. Mr. Buckwalter stated that the Group is interested in additional NIAC member participation—12 NIAC substantive points of contact are currently engaged along with one NIAC member. The 13 members represented are Mr. Ed Archuleta, Dr. Craig Barrett, Mr. Al Berkeley, Mr. David Bronczek, Mr. Wes Bush, Ms. Peg Grayson, Mr. David Kepler, Chairman Erle Nye, Mr. Jim Nicholson, Mr. Tom Noonan, Governor Tim Pawlenty, Mr. John Thompson and Mr. Mike Wallace. All have been a great contribution to the thoughts presented today relative to the scope, the approach, the concepts, and the issues associated with resiliency. The effort also has strong secretariat and research support, including secretariat staff and support from the contractor who supported the Strategic Partnership Assessment Study.

There are three areas to address in order to meet the scope defined: examining the resilience policy within the Department of Homeland Security and other related departments; two, an examination of current industry resilience plans and activities, as well as a review of their history of success. The examination will allow the Group to ascertain some best practices for certain critical infrastructures and key resources within the nation. And, lastly, a review of selected national-level resilience policies and practices within the international community, especially for those countries who have employed resilience measures as they have responded to repeated attacks, such as the United Kingdom, Spain, and Israel. Mr. Buckwalter added that the international consideration will be tempered with the nature of different resilience approaches permitted under different legislative and legal regimes. These three areas of data collection will provide necessary information for the Study Group to be efficient and effective, and to produce a value-added set of recommendation within the scope of the study, for both the Department and the Administration. Mr. Buckwalter turned the meeting over to Ms. Grayson.

Ms. Grayson thanked Mr. Buckwalter and explained that in these early meetings, the group began by looking at key guiding concepts. From the *Strategic Partnership Assessment Study*, the Group found that government and private sector, critical-infrastructure, key-resource owner and operators have different roles and priorities in infrastructure protection. Moving beyond protection, the private sector owns and operates approximately 90 percent of the assets that are associated with the critical infrastructure and key resources in the country. Government's role

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includes public-policy and protection. The owners of the critical infrastructure assets are responsible to their shareholders and their customers. They also want their assets to enjoy the benefit of protection from the government and recognize that the priorities are aligned best through partnership. In each of the critical infrastructure areas, the owners and operators have already put in place backup plans, redundancy plans and recovery plans. But what happens if something goes wrong? How does the Nation recover? How does the CI/KR company recover? Many of the private sector practices are known and shared within the sectors, but issues of competition still exist where the private sectors, and each of the critical infrastructure sectors, have their individual plans developed. The Council seeks to gather information from both the public and private entities to best understand the risks and expand and share that information through collaboration and partnership to identify best practices that ensure the ability to respond quickly—so that both the private sector and the public sector understand and respond appropriately in the face of a disaster.

The study will look at the need for the highest level of protection in the different critical infrastructure sectors where a protection approach is necessary and appropriate. The Study Group looked at nuclear power plants and chemical facilities—those that require a different level of protection because of the risk and potential for loss of life if not protected. Prioritizing and understanding where protection should be placed at the highest level, and where and how a resilience plan is put together is within the scope of this study. Refining to the need for, and the ability to achieve, protection for the critical infrastructures will look at both interaction and overlap between protection and resilience. The Study Group will begin to reach out to CEOs to understand very clearly what plans exist currently.

The Group looked at a series of key questions to evaluate the partnership model to understand whether or not that model was correct for ensuring resilience—the partnership is the appropriate way to move forward into a resilience mode, and will strengthen the infrastructure resilience if it can adopt and work effectively through an information-sharing model. This is vital to understand and evaluate the measures and mechanisms that are in place today that promote resilience and rapid recovery; what incentives exist and what must be created. One area difficult to understand is public-versus-private roles and responsibilities. The private sector needs to accomplish a return on investment for shareholders, while the government role and responsibility is to protect American citizens and to make sure that critical infrastructures are available.

To define resilience in the context of the partnership model, the goal and the objective is to look at and evaluate how strongly that model can be built, how strongly the partnership can be built, and to define the public and private sector roles, for implementation both protection and resilience approaches.

Moving forward from the Strategic Partnership Assessment Study, the Study Group will examine the Strategic Homeland Infrastructure Risk Analysis (SHIRA) process with respect to prioritizing functions, as opposed to the asset-based approach that exists currently. Protection will be a high priority where protection is critical—where loss of life could be an incident, but the resilience and recovery will also be part of that communication and part of the information sharing. The Group will look to identify partnership policies that make critical infrastructures

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more resilient, moving forward from only protection, to protection and resilience, and then resilience and recovery.

The Study Group realizes that it has an aggressive timeline, and with the approval of the plan, the Group will be ready to begin quickly. The timeline shows completion of this resilience element of protecting critical infrastructure to be done by the October 2009 meeting with the initial findings set for April 2009 and the recommendations set for the July 2009 meeting. The Study will produce a considerable amount of information that will need to be assimilated; and there is a tradeoff between the urgency to meet a timeline and diligence to content of the Study itself. The Working Group is looking to produce a comprehensive report within this time frame, but will also stand ready to extend the Study, if necessary to ensure a solid, credible and actionable set of recommendations that will allow resilience to be integrated into protection—both on the public side and on the private side.

Ms. Grayson opened the floor to questions.

Chairman Nye thanked Ms. Grayson, adding that it was a thoughtful plan that has been developed. He complimented Ms. Grayson, Mr. Buckwalter, and Mr. Bush for their leadership. Asking if anyone had any comments, Chairman Nye opened the floor for discussion.

Mr. Bush stated that it was a good overview of where the Study Group stands, and added that the appeal for comprehensive participation in the Study is important.

Mr. Berkeley added that he wanted to ensure that the Council is getting enough coordination and input from the work already being done in the government—DHS and other agencies. Mr. Berkeley asked Chairman Nye if that has happened yet to ensure that the Council does not miss projects already underway.

Chairman Nye agreed that the Council could miss some items because of the sheer amount of enterprises, private corporations, private business, and the government. Noting that all the reports the NIAC has received, the Council asks for specific feedback on work completed. Thus far, the feedback has been that the work has been well received and various elements of the government far beyond DHS are logging positive responses. Comprehensively, the private sector can not practically pick up the lead from the public sector, following up on all of its responsibilities. Chairman Nye then deferred to ASIP Stephan for his comment and perspective for the private and public sectors.

ASIP Stephan thanked the Chairman and offered to put the Council in contact with the federal sector lead counterparts for the 18 critical sectors on the Government Coordinating Council. Continuing, ASIP Stephan noted that DHS issued the initial and fundamental set of Sector-Specific Plans (SSPs) about two years ago. Many of the sectors, like the Electric Sector, Communications, IT, Defense Industrial Base, Water and others, fundamentally rely on the strategy of resiliency as a backbone of their actual protective architecture to withstand a significant blow, either from terrorists or Mother Nature. Other sectors are relying more on buying down the risk up front through physical and cyber-security to prevent unacceptably consequential loss of life and damage to the economy as the result of an impact to those types of

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structures. ASIP Stephan added that it is important to consider the fact that there is not a one-size-fits-all approach to the issue, whether some hybrid of physical security, cyber-security, resiliency, robustness, redundancy, depending on the systems, which will lead the Study down the right path to figuring out strategies based upon the right operating and risk landscapes that all the sectors face individually, collectively, and across each other—interdependence.

Additionally, ASIP Stephan stated that some case studies of how the different sectors, DHS, and some other elements of the federal government worked with the private sector during the hurricane season of 2008 will update the Council with respect to reducing vulnerability and where the better strategy is to absorb a blow and then recover as quickly as possible. ASIP Stephan offered his office as a point of contact for the Council to obtain additional interviews or reports.

Chairman Nye thanked ASIP Stephan. Diverging from current business, Chairman Nye asked Under Secretary Jamison if he had any thoughts or comments for the Council.

Under Secretary Jamison thanked Chairman Nye and all the members and said that the meeting had produced good dialogue on the topics, giving DHS substantive feedback. In a couple of different conversations, the discussion identified that there is still work to do in the area of critical infrastructure protection. The Under Secretary stated that he was proud of the accomplishments of the Assistant Secretary.

Under Secretary Jamison thanked ASIP Stephan, the private sector, and the Council for the impact on security improvements across the nation with a framework, produced accomplishments and measured improvements. Noting that the Council should be proud of the work and guidance given, the Under Secretary thanked Chairman Nye and Vice-Chairman Berkeley, and the NIAC Council Members for the resources provided. Concluding, the Under Secretary stated that it had been a pleasure serving and he looks forward to tracking the Council's progress from a different perspective.

Chairman Nye thanked Under Secretary Jamison for his comments and agreed with the view that benefits have come out of the Council's activities, adding that it is due to the partnership because of the outreach on both sides. Mr. Nye said the Council wished him well and appreciated his support during his term.

Moving the meeting back to current business, Chairman Nye asked for comments on the proposal to establish a Working Group for the Critical Infrastructure Resilience Study.

Mr. Mike Wallace offered that the resilience issue came up in the previous Strategic Partnership Assessment Study which concluded in October. It happened because several members felt some responsibility to take a further look into the issue because of the time constraint. Mr. Wallace added that he was gratified that the NIAC will continue the work, to better understand resiliency.

Before calling for a motion to approve the Study, Chairman Nye asked if there were any other comments or questions. Hearing none, the Chairman asked for a motion to formally approve the establishment of a Working Group for the Critical Infrastructure Resiliency Study.

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Mr. Gil Gallegos moved to establish the Working Group, was seconded by Mr. Craig Barrett, and the Council unanimously approved the motion.

Concluding, Chairman Nye stated the study has potential and encouraged broad participation for a better report.

VII. NEW BUSINESS

NIAC Chairman *Erle A. Nye*,
Vice Chairman *Alfred R. Berkeley III*, NIAC
Members

Chairman Nye offered a few comments to the Council, noting that the newly approved Working Group plans to accomplish the study by October, and in addition, the Chairman asked them to complete as much of the study as possible by September. The NIAC, as it is currently chartered, under a special executive order, extends through September of 2009. Traditionally, the Council receives a couple of years on an executive order and then rolls over to a new, substantively similar executive order. The Council has been authorized under variations of this Administration and prior Administrations; and will work on an extension of the NIAC charter.

The Chairman stated that the new Administration will have input on whether it wants the NIAC to continue in its current form—that will be present on the current or future council. The Council will operate under the assumption that current members or others will be involved in similar work with the momentum the Council has achieved. At the end of September, the NIAC's charter could expire; and with the Resilience Study complete as planned, the Council could approve it then.

Citing need for precautionary measures to preserve the work now underway, the Chairman called for members to approve his call for a meeting in September, perhaps in lieu of an October meeting or perhaps in addition to the October meeting. Chairman Nye asked Ms. Nancy Wong and Mr. Bill Muston to poll the NIAC members for their availability for the second and third Tuesdays in September—the 8th and 15th respectively. Adding that he did not intend to cancel the scheduled October meeting, because he believes the NIAC will be re-chartered.

Chairman Nye opened up the floor for discussion.

Mr. Berkeley responded that it was prudent to schedule a September meeting as well as to ask the Working Group to have a final report available, given the contingency of the charter. Chairman Nye added that Mr. Bush should expedite the Resilience Report.

Mr. Bush commented that the Chairman and Vice-Chairman's request was reasonable, and despite the tradeoff between speed and the quality of the product, the September date was a reasonable objective for the Working Group to take on.

Mr. Berkeley underscored the need for the Working Groups to understand the resources available to them for the progress and movement in the two reports.

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Chairman Nye added that the NIAC was making good progress in the meeting and thanked everyone for attending. Moving the Council into the closing remarks, Chairman Nye stated that ASIP Bob Stephan had been tremendously influential and helpful over the years, in addition to all the support.

VIII. CLOSING REMARKS

Michael Chertoff, Secretary, DHS;
Robert B. Stephan, Assistant Secretary for
Infrastructure Protection, DHS

ASIP Bob Stephan thanked Chairman Nye and stated that with the Chairman's leadership, the team of CEO's, and other officials that the safety and security of the country had been increased. He continued, explaining that without the Council's assistance, DHS would not have been able to be as successful with this [public-private] partnership.

ASIP Stephan continued, stating that he will step down from his appointed position soon and introduced the new Acting Deputy Assistant Secretary for Infrastructure Protection Major General (Retired), James Snyder. ASIP Stephan described Major General (MG) Snyder as very capable, solid, and a proven leader. With about three dozen years of active and reserve duty with the United States Army, MG Snyder was most recently on the battlefield of Iraq, overseeing the rebuilding of the damaged infrastructure of that country.

Looking back prior to September 11, 2001, this DHS team and others have accomplished many tough issues on the terrorism front and on the disaster front of pre-Katrina. Noting what DHS has done to date, no other country in the world has accomplished the same — building a mission area from scratch, bringing together different people, different sectors, different governmental jurisdictions, different disciplines — that is unparalleled and unmatched. ASIP Stephan likened critical infrastructure protection and resiliency from 1776 to 2001 at the grammar school level. Since then, the country has achieved a college-level status in terms of issues that are presented and dealt with in a dynamic risk and operating environment.

The ASIP expressed hope that the next Administration would continue to build upon the platform established by the partnership. The infrastructures to protect are dynamic, and in some sectors, change every day, like the IT and the Communications world. The threat vectors attacking the country are fundamentally different as well; whether al Qaeda, Mother Nature, or someone really stupid—they are all dynamic adversaries to deal with in terms of protection and resiliency, and that will never change.

ASIP Stephan stated that he was honored to serve the Administration, work with everyone at the state and local level, the private-sector level, and the American people under some very able leadership, including my Under Secretary, as well as other federal colleagues. The progress across all infrastructure fronts was a turning point: integrating the lessons learned from Katrina and bringing a national team of infrastructure protection to focus on the incident management world in the fall of 2007. Two other examples of monumental turning points for the infrastructure mission are dealing with the California wildfires, working with the infrastructure partners letting them know what was coming, getting state and local partners to perform pre-burns of vegetation around those facilities allowing the fires to bypass the facilities without

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really damaging them; and the hurricane season of 2008 that possessed the potential for incredible destruction. ASIP Stephan wished everyone the best of luck and Godspeed into the future.

Chairman Nye responded that the Council was glad that ASIP Stephan and the NIAC crossed paths and wished him Godspeed and looking forward to their paths crossing in the future. Chairman Nye asked if MG Snyder had any comments.

MG Snyder thanked Chairman Nye for the privilege to be present at the meeting and to carry on the great work for both the Under Secretary and the ASIP. MG Snyder said his goal is to continue the partnership evident today and to support the work to maintain the momentum built, so the transition of Administrations can go as smoothly as possible.

Chairman Nye thanked the MG Snyder and asked if Secretary Chertoff was present. Secretary Michael Chertoff said that he was present on the phone and had been listening to ASIP Stephan's eloquent remarks. The Secretary stated that ASIP Stephan has done a magnificent job, not only working with this Council but working, in general, with the private sector. In addition to being the architect of the National Infrastructure Protection Plan (NIPP) and the sector coordinating plans, the Assistant Secretary led through all kinds of natural disasters and has been an unbelievable contributor to the security of this country and serving with enormous steadiness since his department was created. The secretary acknowledged that this meeting will be his last conference call with the Council, adding that this group represents an important element of the philosophy of Homeland Security during his tenure, which is recognition that the problem of homeland security is not a government-only job, because government lacks the resources, the skills, and the bandwidth to secure everything, everybody, and itself. That the whole philosophy only works in the partnership—setting up rules of the road, with private sector cooperation maximizing the ability of people to secure themselves and their stakeholders. The work done, contributed mightily to DHS putting together some plans and strategies for securing infrastructure. The continued work on resiliency is important, because of veritable threat vectors; however, much of the load will fall on the private sector, and the work done now will pay off in the future.

The Secretary thanked each of the individual's for their service, as well as their contributions, noting that it sometimes disrupts schedules. He added that it has been enormously important to the DHS, to the country as a whole, and the President. Unsure of the next Administration's reconfiguring, the Secretary anticipates the new Administration will continue with the spirit of cooperation that has characterized all the work accomplished together.

Chairman Nye replied that the Council has appreciated the Secretary and at a prior meeting several months ago, the Chairman had made the comment that the Secretary was one of his heroes — because of his no-nonsense, practical approach to the Nation's security interests and issues. Secretary Chertoff, you go about your work in a self-effacing manner, always putting the Nation's interests first, and your own interests last, with the courage, diligence, and commitment that you exemplify is something that any leader could pattern his or her self after. Speaking for the Council, the Chairman added that the Council respects the Secretary, admires him, and appreciates him for what he has done for the Council.

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IX. ADJOURNMENT

NIAC Chairman *Erle A. Nye*, Presiding

Chairman Nye thanked everyone for their presence, and added that the meeting was one of the shorter meetings the NIAC has conducted, but a productive meeting. The next NIAC meeting will be April 14, 2009 in Washington, D.C., but will be a teleconference—there will also be a public session. Chairman Nye asked the Members if there was anything further to discuss, hearing none, the Chairman adjourned the meeting.

I hereby certify the foregoing minutes accurately represent the discussion and events that transpired at the meeting held on the date first noted above.

By: /s/ Erle A. Nye
Erle A. Nye, Chairman, NIAC

Date: May 8, 2009