WAR PROFITEERING AND OTHER CONTRACTOR CRIMES COMMITTED OVERSEAS

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

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CONTENTS

JUNE 19, 2007

Page

OPENING STATEMENTS

The Honorable Robert C. "Bobby" Scott, a Representative in Congress from the State of Virginia, and Chairman, Subcommittee on Crime, Terrorism, and Homeland Security 1
The Honorable J. Randy Forbes, a Representative in Congress from the State of Virginia, and Ranking Member, Subcommittee on Crime, Terrorism, and Homeland Security 3

WITNESSES

The Honorable Stuart W. Bowen, Jr., Special Inspector General for Iraq Reconstruction, Arlington, VA
Oral Testimony 7
Prepared Statement 8
Mr. Thomas F. Gimble, Principal Deputy Inspector General, U.S. Department of Defense, Washington, DC
Oral Testimony 11
Prepared Statement 13
Mr. Barry M. Sabin, Deputy Assistant Attorney General, U.S. Department of Justice, Washington, DC
Oral Testimony 27
Prepared Statement 29
Mr. Alan Grayson, Grayson & Kubli, P.C., McLean, VA
Oral Testimony 40
Prepared Statement 42
Ms. Erica Razook, Legal Advisor to the Business and HuMAN Rights Program, Amnesty International, New York, NY
Oral Testimony 44
Prepared Statement 46
Mr. Scott Horton, Adjunct Professor of Law, Columbia University School of Law, New York, NY
Oral Testimony 48
Prepared Statement 51

APPENDIX

Material Submitted for the Hearing Record 79

WAR PROFITEERING AND OTHER CONTRACTOR CRIMES COMMITTED OVERSEAS

TUESDAY, JUNE 19, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:05 p.m., in Room 2141, Rayburn House Office Building, the Honorable Robert C. "Bobby" Scott (Chairman of the Subcommittee) presiding.

Present: Representatives Scott, Delahunt, Johnson, Forbes, Coble, and Chabot.

Staff Present: Bobby Vassar, Subcommittee Chief Counsel; Ameer Gopalani, Majority Counsel; Veronica Eligan, Professional Staff Member; Caroline Lynch, Minority Counsel; and Kelsey Whitlock, Minority Staff Assistant.

Mr. SCOTT. The Subcommittee will come to order.

I am pleased to welcome you today to the hearing before the Subcommittee on Crime, Terrorism, and Homeland Security on "War Profiteering and Other Contractor Crimes Committed Overseas."

Over the last 4 years, reconstruction fraud has run rampant during the engagement of U.S. forces in Iraq and Afghanistan. The United States has devoted more than $50 billion to relief and reconstruction activities in Iraq and Afghanistan, and the inspectors general that are here before us today have reported that millions of these dollars still are unaccounted for.

Millions may have been lost to fraud and other misconduct, and these inspectors general have opened hundreds of investigations into fraud, waste and abuse in Iraq, Kuwait and Afghanistan involving illegal kickbacks, bid rigging, embezzlements and fraudulent overbilling.

In addition to the fraud, there is well-documented evidence of detainee abuse perpetrated by contractors as well as evidence of unjustified shootings and killings by private security contractors.

Private contractors have been used to a greater extent that at any other time in our history. With the exponential use of contractors comes the greater scrutiny of which laws, if any, they are exposed to, and we currently have a situation in which many contractors act with impunity and no accountability because they operate

outside of the physical jurisdiction of the United States and, therefore, outside of the jurisdiction of the U.S. Criminal Code.

I hope at this hearing we will be able to explore the following questions: What is the extent of the problem, why are there so few prosecutions, what are the reasons for the lack of transparency in investigations and prosecutions, and are the existing laws adequate to address these problems?

With respect to the first point, considering the vast amount of evidence and investigations, there have been relatively few prosecutions for fraud or detainee abuse. Inspectors general before us have more than 70 open and active investigations in contracting fraud and abuse in the war. In addition, private whistleblowers have filed numerous civil claims involving Iraq fraud under the False Claims Act.

Despite the breadth of all of these investigations and cases, the Department of Justice has pursued only a relatively small number of the cases, and it has not even participated at all in the whistleblower cases.

With respect to detainee abuse in Iraq, there has only been one successful prosecution of a civilian contractor, and that was for the conviction of a CIA contractor for beating a detainee who later died.

Another question that arises with respect to prosecutions and investigations is a lack of transparency. For example, 17 pending cases of detainee abuse, including the abuse at Abu Ghraib prison by contractors, have remained on the docket of the U.S. attorney's office in the Eastern District of Virginia for 3 years.

In some of these cases, the Army has investigated the circumstances behind them and found probable cause that a crime has been committed and referred these cases to the Department of Justice for prosecution. But we are not told why these cases are being held up and what the next steps are for prosecution.

On the fraud side, the Department of Justice has ignored the False Claims Act cases by obtaining court orders sealing the cases. Most of the cases filed regarding the war profiteering in Iraq have remained under seal.

Finally, we need to examine whether the present laws on the books are sufficient to address the problem. Although there are antifraud laws to protect against waste of the United States dollars at home, no law expressly forbid war profiteering or expressly confers jurisdiction of the U.S. Federal court to hear fraud cases outside the normal bounds of the United States Criminal Code.

To this end, the gentleman from Hawaii, Mr. Abercrombie, has introduced H.R. 400, the "War Profiteering Prevention Act of 2007," a companion bill to Senator Leahy's War Profiteering Act.

The legislation would criminalize overcharging taxpayers to defraud and to profit extensively from a war military action or reconstruction effort. The crime would be a felony subject to criminal penalties of up to 20 years in prison and fines up to a million dollars or twice the illegal gross profits of the crime, whichever is higher.

The bill also prohibits false statements connected with the provision of goods and services in connection with war or reconstruction effort. This crime would be a felony subject to the criminal pen-

alties of up to 10 years in prison and fines up to $1 million or twice the illegal gross profits of the crime, whichever is higher.

In sum, the bill sends a clear message that all contracting fraud, whether it occurs in Iraq or elsewhere overseas, for exorbitant gain is not only unacceptable and reprehensible; it will be illegal.

With respect to the detainee abuse and other human rights crimes committed overseas, we need to examine whether the Federal courts have the appropriate authority to hear such cases. While some abuses by military and some security contractors may be prosecuted under current U.S. law, there have been calls to clarify and amend the Military Exterritorial Jurisdiction Act, the MEJA.

When that was signed into law in 2000, it provided the United States Courts with jurisdiction over only those civilian employees, contractors and subcontractors affiliated with the Defense Department who create crimes overseas. That law was later amended in 2005 to include employees of any Federal agency supporting the mission of the Department of Defense overseas.

We need to make sure that the growing number of contractors overseas do not escape accountability simply because they are not deemed to be supporting the mission of the Department of Defense. To this end, on January 10, the gentleman from North Carolina, Mr. Price, introduced H.R. 369, the Transparency and Accountability and Security Contracting Act of 2007.

The bill includes two provisions which will close the loophole to cover all private security contractors, not just those associated with the Department of Defense, to ensure that they are accountable under U.S. law. He also recently introduced the provision as a standalone bill, H.R. 2740, the MEJA Expansion and Enforcement Act of 2007.

So, today, I hope we can determine what kind of priority the Department of Justice assigns to reconstruction fraud cases, why many cases have not been prosecuted and what can be done to correct the situation, whether it is through legislation, more resources or other action.

It is now my privilege to recognize our esteemed colleague, the Ranking Member of the Subcommittee, my colleague from Virginia, Randy Forbes, for his opening statement.

Mr. FORBES. Thank you, Mr. Chairman.

And to all of our witnesses, we appreciate you being here today and taking your time both in preparing for this testimony and presenting it to us and responding to our questions.

I want to thank Chairman Scott for holding this hearing on H.R. 400, the "War Profiteering Prevention Act of 2007" and H.R. 369, the "Transparency and Accountability and Security Contracting Act of 2007."

First of all, something we all agree on, it is not new, it is not novel, and that is that fraud against the United States and the defense industry or in relief or reconstruction activities undermines our national security. Criminals who enrich themselves at the expense of our military effort deserve stiff sentences. Their actions threaten the safety and security of our men and women in uniform and the success of our military operations.

Unfortunately, we see it in Iraq, we see it in New Orleans when we have relief efforts down there, and we act as if sometimes this has just been birthed today or it has just been birthed in this war.

As I look at the parties and the stakeholders and discussing this legislation, there are a number of currents that all start coming together. There are representatives from Government whose job it is to oversee this and do a good job in trying to find out and make sure the Government gets what it has paid for. We have attorneys who make a lot of money off this kind of litigation and, obviously, have a strong interest in making sure that it takes place. And then we have politicians who love to always point their fingers and act like this is something new and different, and it just arrived.

I have looked at some of the history of war profiteering, and, you know, we have had arms merchants that have been profiteering for centuries. During the Civil War, Lincoln denounced war profiteers as worse than traitors. He pushed for the first Federal laws against abuse. These were called the False Claims Act.

Congressional investigations were conducted, and Congress passed antiwar profiteering statutes after World War I, World War II and the Korean War. A provision from a statute in World War II was used as a model for a provision which was attempted to be added to legislation in 2003, but was stripped out of the final bill.

August 31, 1990, Senator Jim Sasser of Tennessee challenged oil companies to reduce their prices or face profiteering charges as the crisis in the Middle East escalated.

September 12, 1990, then President Bush warned the U.S. would not tolerate profiteering during the then Persian Gulf crisis after legislation was introduced in both the House and the Senate to prohibit excess fuel price increases during national emergencies.

A U.S. renegotiation board, a separate entity created the Korean War to guard against profiteering by defense contractors—in 1978, it returned $34.4 million in profits it had found to be unwarranted, while spending only $6.2 million. Its demise came in 1976 after Congress refused to extend the budget.

And during Lyndon Johnson's presidency, allegations were made against some corporations who had contributed hugely to his campaign, suggesting that they had close ties to the President which dated back to the 1940's and that there was huge profiteering involved then.

Today's witnesses will outline the significant effort that has been made by the Justice Department, the Department of Defense and the special investigator for the government of Iraq reconstruction to identify and prosecute fraudulent schemes in the global war against terrorism.

These cases are difficult to bring since they occur in or close to the theater of war. Fraud cases require extensive investigative resources and documentation. Gathering such evidence in a dangerous setting like Iraq or Afghanistan makes it extremely difficult sometimes to build a successful prosecution.

Despite these difficulties, as the witnesses will explain, many successful prosecutions have been brought by the Justice Department, and it is likely that more will be brought. These cases are not unique to any national effort in our Nation's history.

When large amounts of money are expended, criminals see an opportunity to steal from the Government. Those criminals must be punished, and justice must be swift and sure.

Some may use this issue for political advantage by alleging that such criminal activity reflects cronyism in the Administration. Such claims are made without any factual base and are actually contradicted by the prosecutions against its contractors.

I am interested in focusing on the nature of the problem and what, if any, additional resources are needed to fix the problem. It is easy just to say or propose that additional FBI resources should be added to investigate these cases without considering the impact on other FBI responsibilities. Similarly, some may argue that more cases should be brought. We all agree on that.

My concern is how to deal and how to do that in the most effective way possible, making the most from the resources that are available and considering what resources may be needed to help this effort.

With respect to the specific proposals before us, the Justice Department has raised significant problems with H.R. 400, the "War Profiteering Prevention Act of 2007." Specifically, the Justice Department raises several significant concerns with the wording of the bill which would actually hinder rather than help the prosecution of war profiteering cases.

Moreover, the Justice Department is currently prosecuting these cases under a variety of existing fraud and racketeering statutes, and acting anew in separate criminal statute for war-related fraud could make it, some would argue, more difficult to prosecute some of these cases.

It is important to keep in mind that criminal prosecutions do not occur in a vacuum. Criminal statutes are accompanied by a body of case law that guides their use. Adding a separate statute for war profiteering may score a political point, while actually weakening U.S. efforts to prosecute these crimes. Sometimes more is not better. It is just more.

I also have concerns about H.R. 369, the Transparency and Accountability and Security Contracting Act of 2007. H.R. 369 extends extraterritorial jurisdiction to include a person employed under a contract or subcontract at any tier awarded by any department or agency of the United States government where the work under such contract is carried out in a region outside the United States in which the armed forces are conducting a contingency operation.

Such authority is not needed to prosecute fraud committed in the defense industry or in the relief or reconstruction efforts. This is an attempt to extend jurisdiction of the Federal criminal code to war crimes, alleged torture and other criminal acts committed by persons under contract with non-DoD agencies.

Congress is legislating in response to allegations of such crimes. We must be cautious in extending the Military Extraterritorial Jurisdiction Act because, as written, the proposed language may be struck down as an unconstitutional assertion of criminal jurisdiction.

I urge Chairman Scott to hold a separate hearing on the issues raised by H.R. 369. Our Subcommittee works best when we deal

with issues in a fair and full debate. Such process brings greater consensus and sharpens the issue.

I look forward to hearing from today's witnesses and working together to address these important issues.

Mr. Chairman, thank you again for having this hearing, and I yield back the balance of my time.

Mr. SCOTT. Thank you. Thank you. And I thank you for your statement.

We have been joined by Mr. Delahunt from Massachusetts, Mr. Johnson from Georgia, and Mr. Coble is with us from North Carolina.

Our witnesses today—we will begin with Mr. Stuart Bowen, who has served as special inspector general for Iraq reconstruction since October 2004. He previously served as inspector general for the Coalition Provisional Authority, a position to which he was appointed in January of 2004. He holds a BA from the University of the South, attended Vanderbilt Law School and received a JD from St. Mary's Law School.

After he testifies, our next witness will be Mr. Thomas Gimble, principal deputy inspector general for the Department of Defense. He also served as acting inspector general until April 30, 2007. As principal deputy inspector general, he reports directly to the DoD inspector general. He attended Lamar University where he received a BBA and the University of Texas at San Antonio where he received an MBA. He is a certified public accountant and certified government financial manager.

Mr. Barry Sabin, Deputy Assistant Attorney General in the criminal division of the United States Department of Justice. Since 2006, he has been responsible for overseeing the fraud section, criminal appellate section, gang squad and capital case unit. He received his bachelor's and master's degrees from the University of Pennsylvania and a law degree from New York University School of Law.

Next will be Mr. Alan Grayson who is the principal at Grayson & Kubli. Before he started the firm, he was a founder and president of IDT Corporation. He received his juris doctorate from Harvard Law School, holds a master's from the Kennedy School of Government at Harvard, and completed his undergraduate work at Harvard.

Next is Erika Razook who for 2 years has advised Amnesty International's Business and Human Rights Program where she conducted research and analysis of applicable laws, agency regulations, proposed bills and other mechanisms for holding private, military and security contractors accountable for human rights violations and criminal acts committed on foreign soil. She holds a law degree from Brooklyn Law School.

Our final witness will be Scott Horton who is an adjunct professor at Columbia Law School where he teaches law of armed conflict and commercial law courses. He is also chair of the committee on international law at The Association of the Bar of the City of New York. Since February of this year, he has managed the project on accountability of private military contractors on Human Rights First. He is an author of more than 100 publications dealing with issues of international public and private law, and he is currently

working on a book on legal policy issues relating to private military contractors.

Each of our witnesses' written statements will be made part of the record in its entirety.

We would ask that each witness summarize his or her testimony in 5 minutes or less, and to help stay within that time, there is a timing device at your table which will begin on green. When you have 1 minute left, it will switch from green to yellow, and then finally to red, when the 5 minutes are up.

Our first witness will be Mr. Bowen.

TESTIMONY OF THE HONORABLE STUART W. BOWEN, JR., SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION, ARLINGTON, VA

Mr. BOWEN. Thank you, Mr. Chairman.

Chairman Scott, Ranking Member Forbes, and Members of the Subcommittee, thank you for this opportunity to address you today on the work of my office, the special inspector general for Iraq reconstruction.

Permit me to outline several points essential to understanding the challenges of investigating and prosecuting fraud in Iraq.

First, corruption within the Iraqi government, indeed within the fabric of Iraqi society, is a serious problem that inhibits progress on many fronts. This is widely recognized by the government of Iraq and the international community. SIGIR has called Iraq's endemic corruption problem a second insurgency.

I returned last month from my 16th trip to Iraq since my appointment, and during my visit, I met with the commissioner of Public Integrity, who heads the institution created by the CPA, the Coalition Provisional Authority, charged with increasing accountability in Iraq for corruption. I also had met with the president of the Board of Supreme Audit, which is the analogue to the Government Accountability Office.

The CPI commissioner told me that he currently has over 2,000 cases involving $5 billion in alleged corruption, and the president of the Board of Supreme Audit has hundreds of audits ongoing, and in virtually every case, as he has reported to us, he has found a serious lack of accountability within the Iraqi government.

Now let me emphasize that the CPI and the BSA both oversee Iraqi money, of course, not U.S. money, Iraqi money that has been stolen from Iraqi programs.

During my recent visit, I was also informed about political interference with the work of these Iraqi anti-corruption entities. For example, I learned that ministers and former ministers are exempt from prosecution unless assent is received from the prime minister of Iraq.

Each minister also, under Article 134 B of the Iraqi criminal code, can exempt from prosecution any employee of their respective ministries from insight. This effectively creates an undemocratic bulwark against the enforcement efforts to fight corruption in Iraq.

SIGIR's specific role in reviewing the anti-corruption efforts is to report on, through audits, the ethicacy of U.S. efforts to build up the rule of law system.

In July 2006, we released a survey on American efforts and found that a very modest amount, specifically $65 million, had been allocated to support anti-corruption efforts within the Iraq government. My auditors found that our efforts have not been sufficiently coordinated or focused and that more adequate leadership and organization was needed

The embassy has responded to a number of our concerns, but we are prepared to soon release an update on last year's report that will address both progress made and problems that remain.

My second point is that the incidence of corruption within the U.S. reconstruction program appears to constitute a relatively small component of the overall American financial contribution to Iraq reconstruction. Based on the work of the 18 criminal investigators on my staff, I believe that losses to American taxpayers from fraud in reconstruction programs have amounted and will likely amount to a relatively small component of the overall investment in Iraq reconstruction.

However, the fact that the fraud we have detected is a relatively small component does not diminish the aggressiveness with which we pursue these allegations. We have found egregious incidents of fraud, and we have pursued those investigations and, in conjunction with the Department of Justice, have pursued and succeeded in prosecutions.

Four subjects of our investigations have been prosecuted and are in prison now. Faheem Salam was caught in a sting operation run by my agency. He is in prison for 3 years. Philip Bloom and Robert Stein, the comptroller for CPA's south region, were caught in a conspiracy to steal millions of dollars in Development Fund for Iraq money. Bloom is now in prison for almost 4 years; Stein, for 9 years. Others caught in that web include Steven Merkes who is in prison for just over a year. Bruce Hopfengardner will be sentenced later this month. And we have five more that will be prosecuted soon.

There are also, as you mentioned, Mr. Chairman, over 70 cases ongoing managed by my investigators and over 30 under prosecution at the Department of Justice, and I expect in the course of this year we are going to see significant progress, the fruits of these investigations and the results of these prosecutions.

Ultimately, it is about coordination, with both the DOJ and with my colleagues here at the table, through a series of task forces that helped get the job done in Iraq today. And most importantly, I think, the latest significant development is the formation of the Joint Operations Center co-located at the FBI wherein a variety of all of the U.S. government entities with oversight in Iraq are working together, communicating about leads, pursuing cases and ultimately achieving prosecutions.

Mr. Chairman, Members of the Committee, thank you for your time and attention to these important matters, and I look forward to answering your questions.

[The prepared statement of Mr. Bowen follows:]

PREPARED STATEMENT OF STUART W. BOWEN, JR.

Chairman Scott, Ranking Member Forbes, and members of the Subcommittee, thank you for this opportunity to address you today on the role of the Office of the

Special Inspector General for Iraq Reconstruction on oversight and investigations into Iraq reconstruction.

To ensure accurate context, permit me to outline several points essential to understanding the challenges of investigating and prosecuting fraud in Iraq.

First, corruption *within* the Iraqi government, indeed within the fabric of Iraqi society, is a serious problem that inhibits progress on many fronts in Iraq. This is widely recognized by the Government of Iraq and the international community. In our quarterly reports, SIGIR has called Iraq's endemic corruption problem a "second insurgency."

I returned last month from my 16th trip to Iraq and, during my visit, I met with the Commissioner of Public Integrity, who heads the institution created by the CPA to increase accountability for public corruption in Iraq—and the President of the Board of Supreme Audit, the analogue to the Government Accountability Office, which has existed in Iraq for many decades. The Iraqi anti-corruption authorities again emphasized to me the widespread nature of the problem of corruption, which stretches across the government, afflicting virtually every ministry. And they outlined for me the difficulties they face in implementing their respective anti-corruption mandates.

The CPI Commissioner told me that he currently has 2,000 cases involving $5 billion in alleged corruption. And the President of the Board of Supreme Audit has hundreds of audits ongoing. In virtually every case, he is uncovering a lack of accountability. Let me emphasize that the CPI and the BSA oversee *Iraqi* money—not U.S. money—that is missing or has been stolen from *Iraqi* programs.

During my visit, I was informed about political interference with the work of Iraqi investigators and prosecutors. For example, I learned that Ministers and former Ministers are exempt from prosecution unless the assent of the Prime Minister is obtained; and each Minister is entitled, under an Iraqi criminal code provision, to immunize selectively ministry employees from being held accountable for corruption.

Iraq must make progress on rule of law enforcement, in general, and corruption, in particular; political interference with fighting corruption remains a problem, undermining the effectiveness of the developing rule of law system and consequently eroding the Iraqi people's confidence in their government.

Iraq is a sovereign state. The role of the United States thus is to *encourage* the development of an efficient Iraqi justice system. We do this for its own sake and for the sake of maintaining and building upon the efforts made, at great cost in blood and treasure, by Americans and Iraqis since the liberation of Iraq.

SIGIR's specific role in this process has been to review the effectiveness of United States efforts to improve the rule of law system and to build up the corruption-fighting capacity of the Iraqi government.

On July 28, 2006, SIGIR released a survey on this subject and found that American efforts were funded at a very modest level, given the scope of the problem, receiving about $65 million (about three-tenths of one percent of our total reconstruction spending). My auditors found that American efforts have not been sufficiently coordinated and focused and that more adequate leadership and organization was needed. The U.S. Embassy has responded to some of these concerns since the review was released. SIGIR will soon release another review on the issue, updating our previous report.

SIGIR has a continuing investigative responsibility to detect and investigate malfeasance in American relief and reconstruction programs in Iraq. As part of this effort, we have developed good working-level and leadership-level relationships with the CPI and the BSA. We coordinate with these Iraqi agencies whenever we come across evidence of potential wrongdoing by Iraqis. SIGIR, of course, concentrates its law enforcement efforts on American targets and works with the Department of Justice in their effective prosecution.

My *second* point is that *the incidence of corruption within the U.S. reconstruction program*—judging from those cases that we have uncovered thus far—*appears to constitute a relatively small component of the overall American financial contribution to Iraq's reconstruction.* Based on the work of our 18 career investigators on SIGIR staff, I believe that losses to American taxpayers from fraud within reconstruction programs will likely amount to a relatively small percentage of the overall investment in Iraq, totaling in the tens of millions (rather than hundreds of millions or billions, as is sometimes imagined). However, the fact that the fraud we have detected is relatively small (to date) does not diminish the aggressiveness with which SIGIR pursues allegations of fraud in Iraq. We have found egregious incidents of fraud. And in partnership with the Department of Justice, SIGIR has produced clear results in prosecutions and convictions.

For example, in January, two individuals were sentenced to prison as a result of SIGIR investigations. In early February, indictments were announced of five more

individuals, resulting from SIGIR investigations. To date, SIGIR has opened over 300 cases, and we have over 70 ongoing investigations. Thirty-two of those cases are under prosecution at the Department of Justice.

We believe that the publicity our enforcement actions have received has helped to deter misconduct in the U.S reconstruction program. And we also believe that enforcement will be an increasingly important part of SIGIR's mission over the next 18 months. Moreover, in the course of this year, we expect to produce concrete investigative results as significant current cases come to fruition.

SIGIR remains committed to a robust, deterrent presence in Iraq as long as our temporary organization exists. Today, I have five investigators on the ground in Iraq investigating fraud. Although there are other law enforcement agencies fighting fraud in Iraq, SIGIR has maintained over the past three years the largest contingent of fraud investigators in Iraq. My investigators travel the country under dangerous conditions, pursuing leads, interviewing witnesses, and piecing together evidence on a wide variety of cases. Their work also takes them to other countries in the region. Of note, SIGIR is currently reducing its overall personnel "footprint" in Baghdad to conjunction with the reduction in spending of appropriated dollars on Iraq reconstruction.

One of the most important aspects of our investigative efforts is the development of task-force relationships with other agencies involved in oversight in Iraq, including my colleagues from the Office of Inspector General of the Department of Defense and the Defense Criminal Investigative Service, as well as the Federal Bureau of Investigation. SIGIR has 16 investigators in Arlington, and we are participating in the new Joint Operations Center located at the FBI to coordinate and enhance fraud investigations in Iraq.

SIGIR's first task force was the Special Investigative Task Force for Iraq Reconstruction (SPITFIRE), and it combined the efforts of the Internal Revenue Service, the Department of Homeland Security, Immigrations and Customs enforcement office, the FBI and the Department of State Office of Inspector General. That task force was able to effectively pursue the Bloom-Stein conspiracy that my auditors uncovered in Hillah, Iraq—a very egregious kickback and bribery scheme involving over $10 million in reconstruction funds that Philip Bloom, the contractor, and Robert Stein, the Coalition Provisional Authority comptroller for that region, engineered for their own criminal ends. SPITFIRE continues its work today; and we continue to pursue a number of leads that arose from the Bloom-Stein case.

The other major task-force initiative that SIGIR has initiated with the FBI is the International Contract Corruption Task Force (ICCTF). ICCTF prompted the creation of the Joint Operations Center mentioned above, which is producing the effective collection and coordination of investigative leads and source development. Although I am not at liberty to discuss details of these case, I am very pleased with the very significant progress the JOC investigators have made, the news of which I expect to be forthcoming later this year.

Along with SIGIR, the ICCTF includes the U.S. Army's Criminal Investigative Division's Major Procurement Fraud Unit, the Defense Criminal Investigative Service, the FBI, and the inspectors general of the Department of State and the Agency for International Development.

SIGIR is also part of the DOJ National Procurement Fraud Task Force. We continue to work closely with DOJ in the investigation and prosecution of our cases.

Finally, to coordinate efforts in oversight in Iraq, I formed the Iraq Inspector General's Council (IIGC) three years ago, which brings together every agency with oversight authority in Iraq for a meeting every quarter. The IIGC exists to deconflict and coordinate the member agencies' oversight efforts in Iraq.

SIGIR is not limiting its efforts just to addressing contractor misconduct through the criminal justice system. We also refer cases to the U.S. government's administrative debarment and suspension processes. To date, the competent oversight authorities have, through established rules that preserve due process, suspended 17 companies and individuals, debarred ten more, and have another 9 pending debarments.

To date, SIGIR has produced 13 quarterly reports, 86 audit reports, and 90 inspection reports. Our auditors and inspectors regularly refer investigative leads to our investigators some of which have developed into very significant cases. The Bloom-Stein case is just one example.

SIGIR's three lessons-learned reports produced to date have provided recommendations on policies designed to improve economy, efficiency and effectiveness for the Iraq program and for future reconstruction and stabilization operations. The reports have prompted the introduction of reform measures in the Congress that will improve contracting processes. SIGIR is at work on a lessons-learned capping report, which will be produced at the end of this year. It is my hope that our lessons

learned reports will prompt reforms that will improve the capacity of law enforcement to deter crime.

Mr. Chairman, with respect to H.R. 400, Representative Abercrombie's bill entitled the "War Profiteering Prevention Act of 2007, our position is essentially what it was when we were asked to reflect on its counterpart at a Senate hearing this past March. SIGIR remains a strong proponent of legislation that would strengthen efforts to punish fraud or abuse in contracting programs in Iraq or elsewhere. We look forward to working with the Department of Justice to enforce H.R. 400, should it become law. That having been said, I must add that, as we have developed criminal cases in Iraq, we have not become aware of instances where the Justice Department was unable to prosecute, under existing law, on the facts we developed in our investigations.

One of our responsibilities in Iraq is to encourage efficiency in the reconstruction effort. In that role, we have prompted management to seek the widest possible participation by business enterprises (especially Iraqi firms) in reconstruction. The security risks in Iraq are self-evident, and thus the risks to any business enterprise operating in such an environment are mammoth. International companies likely will not get into the business of reconstruction in Iraq without incentives that render the risk-taking worthwhile. This reality should figure in the development of legislation that affects contracting in Iraq or similarly insecure environments.

Whether H.R. 400 becomes law, SIGIR will continue to aggressively pursue investigations, provide robust oversight through audits and inspections, and will press for more efforts to improve contract administration, quality assurance, and quality control. It is my hope that our continuing efforts will help promote an aim we all share—a reconstruction program that is administered and executed honestly, and is as well-managed and efficient as possible under very challenging circumstances.

Mr. Chairman, members of the Committee, thank you for your time and attention to these important matters, and I look forward to answering your questions.

Mr. SCOTT. Thank you.

Mr. Gimble?

TESTIMONY OF THOMAS F. GIMBLE, PRINCIPAL DEPUTY INSPECTOR GENERAL, U.S. DEPARTMENT OF DEFENSE, WASHINGTON, DC

Mr. GIMBLE. Mr. Chairman, Members of the Subcommittee, thank you for the opportunity to appear today before you.

The global war on terror is a top priority for the Inspector General and, currently, we have about 180 people providing oversight.

To date, $558 billion in DoD funds have been appropriated to support the fight against terrorism and to support the men and women of our Armed Forces in Southwest Asia.

To accomplish our oversight mission, we have a combination of initiatives, to include establishing an in-theater oversight presence and improving interagency coordination to minimize duplication within the oversight community. This includes participation in the Iraq Inspectors General Council chaired by the Special Inspector General for Iraq Reconstruction.

In March of 2006, we established our forward field site in Qatar. In February of 2007, we established two sites, Camp Victory and the International Zone, in Iraq. This month, we are establishing our forward field site at Bagram Air Base in Afghanistan. We are also assessing the need for the establishment of a Defense Criminal Investigative Service office in Afghanistan.

Of the 22 ongoing global war on terror-related audits, 19 are Iraq-related audit projects involving critical readiness issues that directly impact the warfighter, such as personnel operational equipment readiness; sustainability of small arms programs; and the resetting of ground vehicles and equipment with the combatant commands. Our audits also include the oversight of contracting,

cash management, and other monetary assets within Iraq, as well as the execution of the supplemental funds used to train and equip Iraq and Afghanistan security forces.

The Defense Criminal Investigative Service, or DCIS, the criminal investigative arm of the DoD inspector general, has been engaged in investigating DoD-related matters pertaining to the Iraqi theater since the start of the war. The presence of the DCIS in the region has led to 93 investigations in areas such as corrupt business practices; loss of U.S. funds through contract fraud; and the theft of military equipment.

DCIS is currently conducting 78 investigations related to the war effort, which include war profiteering, contract fraud, and contract corruption. Fourteen of these investigations are being conducted by DCIS special agents in the Iraqi theater. The remaining 64 investigations are being conducted by special agents in our CONUS and Germany-based DCIS offices.

Both closed and ongoing investigations have resulted in four Federal criminal indictments, nine Federal criminal informations, and two Article 32 hearings under the Uniform Code of Military Justice.

As a result of the investigations, nine U.S. persons and one foreign person were convicted of felony crimes. It resulted in a total of approximately 15 years confinement and 11 years of probation. Additionally, two contractors signed settlement agreements with the U.S. Government.

In all, about $9.8 million was paid to the U.S. in restitution; $323,000 levied in fines and penalties, $3,500 was forfeited; and $61,000 was seized.

In addition to the above judicial actions, four individuals and one company were debarred from contracting with the U.S. Government, and 19 companies and personnel were suspended.

Our policy and oversight component continues to play a key role in developing and promoting the establishment of effective oversight and security organizations in both Afghanistan and Iraq, to include the development of a viable self-sustaining Inspector General system.

Our intelligence component currently has two ongoing projects related to improving the intelligence support to the combatant commanders and warfighters.

We are committed to ensuring that the appropriated resources are used effectively.

I would like to submit my written statement for the record, and I am prepared to answer your questions.

[The prepared statement of Mr. Gimble follows:]

PREPARED STATEMENT OF THOMAS F. GIMBLE

June 19, 2007

Hold for Release
Expected 2:00 p.m.

Statement
of

Mr. Thomas F. Gimble
Principal Deputy Inspector General
Department of Defense

before the

House Committee on the Judiciary
Subcommittee on Crime, Terrorism,
and Homeland Security

on

"War Profiteering and Other Contractor Crimes
Committed Overseas"

Mr. Chairman and Members of the Committee on the Judiciary:

I would like to thank you for the opportunity to appear before this committee. I also want to publicly thank the men and women who serve in our Armed Forces. Each visit I make to Southwest Asia, most recently in April 2007 to Iraq, Afghanistan, and Qatar, reminds me the importance of this office to provide oversight to ensure funds are being appropriately managed and are being used to support the warfighter and achieve Department of Defense (DoD) mission requirements.

As stated in our last Semiannual Report to Congress, the Global War on Terror is at the forefront of our nation's concerns, and continues to be a top priority for the DoD Office of the Inspector General (OIG). Currently we have over 180 OIG personnel providing oversight. To date, $558 billion in DoD supplemental funds have been appropriated to support our fight against terrorism and to support the men and women of our Armed Forces in Southwest Asia.

OIG Strategy

To accomplish our oversight mission, we recognized that we needed a combination of initiatives, to include establishing an in-theater oversight presence, expanding oversight coverage of funds that are predominantly being executed in the United States, and improving interagency coordination and collaboration to minimize duplicative efforts within the oversight community.

We established an audit field office in Qatar with assistance from the Commander, U.S. Central Command, which is also where his forward headquarters is located. We use Qatar as a hub from which audit teams deploy into Iraq, Kuwait, and Afghanistan. The field office is staffed by auditors on a rotational cycle for tours of duty that range from 4, 6, or 12 months. That office has conducted command requested reviews of programs such as the Commanders' Emergency Response Program (CERP).

We have had auditors deploy from Qatar into Iraq to review the Status of Equipment Resources, Iraqi Security Forces Fund, and Potable and Nonpotable Water Quality. Also, we currently have investigators in Kuwait, and auditors and investigators in Iraq, some of whom are the initial staff for our established in-country presence in Iraq. In addition, we have advisors stationed in the International Zone in Baghdad. As of June 2007, we have 22 ongoing audits addressing issues that pertain to the Global War on Terror, including Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF).

We forward deployed to Iraq and established a field activity with assistance from the Commander, Multinational Forces-Iraq, where auditors and investigators support our oversight mission in theater. We are establishing an audit field activity in Afghanistan this month, with auditors who will support our continued oversight of contract surveillance and funds management.

We established a Joint Planning Group on oversight activities in the Southwest Asia Region so that oversight work performed by this organization, the Military Inspectors General and Auditors General, the Department of State and the U.S. Agency for International Development Inspectors General, the Special Inspector General for Iraq Reconstruction, and the Combatant Commands Inspectors General can better coordinate and deconflict oversight activities in the region. Through the Southwest Asia Joint planning Group, we will lead the coordination of oversight required to identify and fix critical mission support problems so military operations can better focus on "the fight." We held the first Southwest Asia Joint Planning Group meeting in April 2007.

In-Theater Presence

We continue to move forward in expanding OIG in-theater presence in Southwest Asia. In March 2006, we established our first forward field site, in Southwest Asia which is collocated with U.S. Central Command Air Forces on Al Udeid Air Base, Qatar. In February 2007, through coordination with the Commanding General, Multinational Force-Iraq, we established our second forward field site at both Camp Victory and the International Zone in Iraq. This month, we are establishing our third forward field site at Bagram Air Base in Afghanistan. We have also dispatched to Afghanistan the Defense Criminal Investigative Service (DCIS) Resident Agent in Charge for Southwest Asia to assess the level of criminal activity targeting DoD resources and to evaluate the logistics and environment implications in establishing a DCIS office in Afghanistan.

Our organization continues to actively conduct audits, investigations, inspections, and intelligence oversight in the Continental United States (CONUS) and Southwest Asia that support the war efforts in Iraq and Afghanistan. Our oversight mission covers DoD funds appropriated for the Global War on Terror, and is conducted by DoD OIG personnel in Southwest Asia to obtain the essential documentation or evidence to support audits and investigations. Each OIG component, Audit, Investigations, Inspections and Evaluations, and Intelligence, is actively involved in oversight efforts in Iraq as well as Afghanistan.

Audits

Of the 22 on-going Global War on Terror-related audits, we have 19 on-going Iraq-related audit projects involving mission-critical support issues that directly impact the warfighter, such as contract surveillance; funds management; personnel and operational equipment readiness; and resetting ground vehicles and equipment with the combatant commands. Our audits include oversight of contracts, cash, and other monetary assets within Iraq, as well as the execution of supplemental funds to train and equip the Iraq security forces.

Many of our audits are initiated in response to identified high-risk areas, and to requests from DoD management and Congress. Examples include audits pertaining to funds management, such as the Iraq Security Forces Fund and the Afghanistan Security

Forces Fund; the implementation of CERP funds in Afghanistan; procurement policies for armored vehicles; and water quality for U.S. forces serving in Iraq.

With respect to our audit of the CERP in Afghanistan, we concluded in our final report issued February 2007 that the Commander, Combined Forces Command – Afghanistan established controls over the CERP; however, those controls were not effective in all cases. The other audits are ongoing. We provided an interim response to Congress in May 2007 on the results of our audit of the four contractor-operated water production sites for nonpotable water. In June 2007, at the request of the Senate Armed Services Committee, we agreed to perform additional audit work on water production in Iraq. Additionally, we have initiated a review of the process for issuing, reverifying, and recovering Common Access Cards provided to contractors working in Southwest Asia. We will also review the Department's procedures to account for the number of contractors working in Southwest Asia.

Investigations

The Defense Criminal Investigative Service (DCIS), the criminal investigative arm of the DoD Inspector General, has been engaged in investigating DoD-related matters pertaining to the Iraqi theater, to include Kuwait, since the start of the war. From May 2003 through October 2004, DCIS had teams deployed to Baghdad. In addition, from October 2004 to present, the DCIS European office as well as multiple CONUS DCIS offices have continued to investigate Iraq-related matters. In September 2006, DCIS re-

deployed special agents to offices in Iraq and Kuwait. Both offices are conducting criminal investigations and examining matters that pertain to the Department.

The presence of DCIS in the region has led to 93 investigations into areas such as corrupt business practices; the loss of U.S. funds through contract fraud; and the theft of military equipment. Our investigations are focused on matters such as bribery, theft, gratuities, bid-rigging, product substitution, and conflicts of interest. These alleged crimes expose U.S. and coalition forces to substandard equipment and services, or shortages that aggravate an already harsh and harmful environment. DCIS is currently conducting 78 investigations related to the war effort (war profiteering, contract fraud, and contract corruption); 14 of these investigations are being conducted by DCIS special agents in the Iraqi theater. The remaining 64 investigations are being conducted by special agents in CONUS and DCIS offices based in Germany.

DCIS seeks to protect America's warfighters by assuring the readiness of U.S. and coalition forces through the vigorous investigation of alleged thefts, anti-trust violations, and other breaches of public trust that affect programs and services with critical security applications.

The investigation of criminal activity in Iraq involves members of the U.S. Armed Forces, U.S. contractor personnel, and indigenous and foreign contactor personnel. In January 2004, an investigation was initiated on information from the Defense Contract Audit Agency (DCAA) concerning allegations of kickbacks and gratuities solicited

and/or received by Kellogg, Brown & Root (KBR) employees and KBR overcharging for food, meals and fuel.

Since the referral, a Federal investigative task force was formed at Rock Island, IL, comprised of DCIS, Army Criminal Investigation Command, the Federal Bureau of Investigation, the Internal Revenue Service Criminal Investigation Division, and the Office of the United States Attorney for the Central District of Illinois. The task force continues to examine criminal allegations involving the execution of the U.S. Army's Logistics Civil Augmentation Program (LOGCAP) III contract by KBR. Some prosecutions have occurred, and others are anticipated.

As a result of the magnitude of alleged criminal activity within the Iraqi theatre, a group of Federal agencies has agreed to formalize their partnership to combine resources to investigate and prosecute cases of contract fraud and public corruption related to U.S. government spending in Iraq reconstruction. The participating agencies in the International Contract Corruption Task Force (ICCTF) are DCIS, the U.S. Army Criminal Investigation Command's Major Procurement Fraud Unit, the Department of State Office of the Inspector General, the Agency for International Development Office of the Inspector General, the Federal Bureau of Investigation, and the Special Inspector General for Iraq Reconstruction.

The ICCTF has established a Joint Operations Center. The Joint Operations Center is a more formal case-coordination cell and criminal intelligence capability to

ensure maximum interagency cooperation to successfully prosecute fraud and corruption cases in support of the war effort. All participants have acknowledged that the ICCTF is a joint operation and all are partners in the operation of the task force. The mission and objectives of the ICCTF are a shared responsibility of the participating agencies. Case information and criminal intelligence will be shared without reservation and statistical accomplishments will be reported jointly. The agency heads or their designees meet regularly to provide policy, direction, and oversight.

In addition, DCIS has initiated a project and committed resources to review documents associated with payments made by the U.S. Army in Iraq. Payment records are currently stored at Defense Finance & Accounting Service, Rome, NY (DFAS-Rome). The DCIS project is designed to proactively detect fraud involving payments made by the U.S. Army to support the war effort in Iraq and ongoing investigations related to the Global War on Terror and Southwest Asia. This is expected to be a long-term effort, and DCIS is working with the ICCTF partners and coordinating its activities with the U.S. Attorney's Office, Northern District of New York. The Deputy Inspector General for Auditing is conducting a concurrent review of the records. Although the project is still ongoing, several questionable transactions have been discovered and referred for further investigation.

Since the Global War on Terror began, DCIS has pursued criminal, civil, and administrative remedies against U.S. contractors and their personnel; U.S. Forces personnel; and foreign entities and persons. Fourteen DCIS investigations that have been

adjudicated fall within the prohibited activities of the legislation sponsored by Representative Abercrombie, the War Profiteering Prevention Act of 2007.

As a result of both closed and ongoing investigations, four Federal criminal indictments, nine Federal criminal informations, and two Article 32 hearings under the Uniform Code of Military Justice. As a result of the investigations, nine U.S. persons and one foreign person were convicted of felony crimes, resulting in a total of approximately fifteen years of confinement and eleven years of probation; four individuals and one company were debarred from contracting with the U.S. Government; 19 companies and personnel were suspended; and two contractors signed settlement agreements with the U.S. Government.

In all, $9.84 million was paid to the U.S. in restitution; $323,525 was levied in fines and penalties; $3,500 was forfeited; and $61,953 was seized.

Inspections and Oversight

Our Policy and Oversight component continues to play a key role in developing and promoting the establishment of effective oversight and security organizations in Afghanistan and Iraq. Currently we are working with the Multinational Security Transition Command in Iraq (MNSTC-I) in Baghdad to assist the Iraq Minister of Defense (MoD) and Minister of Interior (MoI) establish, coordinate and develop a viable, self-sustaining Inspector General system to help combat corruption, fraud, waste, and mismanagement. We also continue to work jointly with other Federal Agency Inspectors

General to conduct critical assessments. For example, we recently completed the Department of State led assessment of the counter narcotics program in Afghanistan along with the Department of Justice OIG and are working with Veterans Affairs OIG to assess the policies, processes, and procedures of the transition of care for wounded soldiers between DoD and VA.

Intelligence

Our intelligence component has two on-going projects related to improving intelligence support to the Combatant Commanders and the warfighter, including one directly focused on support from the Joint Intelligence Task Force for Combating Terrorism. In addition, this component continues to review the U.S. Government's relationship with the Iraqi National Congress that will answer concerns of the House Appropriations Committee and recently completed a review of congressional concerns regarding DoD contracts with the Rendon Group, a public relations firm that provides strategic communications planning and media analysis.

Interagency Coordination

We are committed to remaining an active player in improving interagency coordination and collaboration to minimize duplication of efforts. I'm confident that my colleagues within the oversight community will attest that continuous interagency coordination and collaboration is essential for our mission. To minimize the impact on forward command operations, deconflict overlapping and duplicative oversight requests,

and facilitate the exchange of oversight information in Iraq, we participate in the Iraq Inspectors General Council chaired by the Special Inspector General for Iraq Reconstruction.

We also recognize that the Joint Staff and Combatant Commands Inspectors General are key players in helping us achieve our oversight objectives. To highlight the importance of collaborative oversight responsibilities, we held the Joint Staff and Combatant Commands Inspector General Conference in April 2007 and the first meeting of the Southwest Asia Joint Planning Group, which coincided with the conference. Using this forum, we will conduct oversight efforts to mitigate high-risk areas that are key to the success of OIF and OEF operations. Specifically, we want to leverage and focus joint and interagency efforts on key high-risk areas.

Interaction with Department of Justice

The National Procurement Fraud Task Force (NPFTF) was formed in partnership with U.S. Attorney Offices and Federal law enforcement agencies to strengthen the government's efforts to fight procurement fraud by marshalling resources at all levels of government to increase and better focus law enforcement for maximum impact.

The NPFTF includes the FBI, Federal Inspectors General, defense investigative agencies, Federal prosecutors from United States Attorneys offices across the country, as well as the Criminal, Civil, Antitrust and Tax Divisions of the Department of Justice.

The NPFTF has seven committees: International, Legislative, Intelligence, Training, Grant Fraud, Information Sharing, and Private Sector Outreach. The DoD OIG is represented on each of the seven committees, or their sub-committees, by OIG employees from DCIS, Auditing, Investigative Policy and Oversight, and Data Mining.

Operational Constraints

Operational constraints, such as travel restrictions, impact oversight efforts including the DoD Inspector General. Operational tempo requirements may present operational challenges for us to enter Southwest Asia; specifically in Iraq and Afghanistan. We recognize that the surge of personnel and Army's Relief In-Place Transfer of Authority (RIPTOA) also present a challenge for the commands. Accordingly, our in-country presence serves to facilitate CONUS-based and temporary duty travel oversight efforts that require information from commands in Southwest Asia and responds to in-theater command requests for assistance in mitigating areas of high-risk to successful military operations.

Although a significant number of our reviews are conducted in the "green zone" areas, we must enter the "red zone" or high threat areas to assess claims or allegations. Therefore, we actively engage with the combatant command to ensure that the coordination, timeliness, and force protection measures for movement in and out of "red zone" areas are reasonable enough to minimize or manage the risk to the auditor or investigator as well as force protection staff.

In closing, we recognize that the men and women of the U.S. armed forces are facing enormous challenges ahead for the defense of our nation's goals. We offer our commitment in ensuring that the DoD resources that are appropriated and provided to those men and women of the U.S. Armed Forces are used effectively in the Global War on Terror in Southwest Asia.

Thank you for the opportunity to appear before the committee today to address our ongoing oversight work regarding Iraq.

Mr. SCOTT. Thank you very much.
Mr. Sabin?

TESTIMONY OF BARRY M. SABIN, DEPUTY ASSISTANT ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. SABIN. Chairman Scott, Ranking Member Forbes, Members of the Subcommittee, thank you for the opportunity to be here today to discuss the efforts of the Department of Justice to combat procurement fraud relating to spending on the wars and rebuilding efforts in Iraq and Afghanistan.

I would like to reiterate the Department of Justice's commitment to a strong and vigorous enforcement effort in this area and address three primary points.

First, the Department of Justice has made the investigation and prosecution of procurement fraud, including procurement fraud related to the wars in Iraq and Afghanistan, a priority and has devoted significant prosecutorial and investigative resources to that effort.

Second, the Department is working through the International Contract Corruption Task Force, including the Special Inspector General for Iraq Reconstruction and others Inspectors General, and traditional law enforcement partners to investigate and prosecute procurement fraud and has already developed a track-record of success in this area.

Third, in order to leverage law enforcement resources and more effectively address procurement fraud, the Department formed the National Procurement Fraud Task Force last year. The task force is off to a successful start, has formed key working committees, and is already working to identify and remove barriers to preventing, detecting and prosecuting procurement fraud.

The Department of Justice has taken an aggressive, proactive leadership position to help ensure that dollars from the public fist are used for the purpose to which they have been appropriated and not to line the pockets of corrupt individuals or companies. We take that responsibility seriously. Working with the interagency community, the Department has demonstrated this commitment at the investigative and prosecution stages for both civil and criminal matters.

These DOJ prosecutive components include the criminal, antitrust and civil divisions at main Justice, the United States attorney's offices and the investigative resources at the FBI.

Just last week, training for prosecutors from across the country was conducted at the National Advocacy Center in Columbia, South Carolina. It was productive, and one of the key themes that emerged and we address was how to streamline these complex cases in order to bring them more expeditiously.

The Department has been and is working closely with and through the International Contract Corruption Task Force. It was established in October 2006 as an operational task force. The charter agencies and mission are set forth in my written statement.

These types of procurement fraud cases are usually very complex and resource intensive. The cases often involve extraterritorial conduct as well as domestic conduct requiring coordination between

appropriate law enforcement agencies. Investigating the international component often proves difficult due to the need to cooperate with foreign law enforcement officials and due to the burden of providing adequate security to prosecutors and investigators working abroad. Indeed, the difficulty of locating and collecting evidence and interviewing witnesses in an active combat zone cannot be overstated.

Despite these challenges, the Department of Justice will continue to pursue these cases wherever the evidence leads.

The Department has charged 25 individuals criminally for public corruption and government fraud relating to the war on terror, which includes matters involving Iraq, Kuwait and Afghanistan.

For example, on February 1 of this year, three Army officials and two civilians were indicted for various crimes related to a scheme to defraud the Coalition Provisional Authority South Central Region in Iraq. Defendant Whiteford was once the second most senior official in this area. Defendant Wheeler was an advisor for CPA projects for the reconstruction of Iraq. In August of last year, a lieutenant colonel in the United States Army Reserves pleaded guilty to conspiracy to commit wire fraud and money laundering in connection with this scheme.

The charges against these individuals emanated from an investigation into illegal conduct by Robert Stein, CPA South Central's comptroller and funding officer, and Philip Bloom, a U.S. citizen who resided in Romania and Iraq. Both have pleaded guilty to conspiracy, bribery and money laundering.

The LOGCAP Working Group, which operates out of the U.S. attorney's office in the Central District of Illinois, has also filed criminal charges against eight individuals for bribery and kickbacks associated with Iraq reconstruction efforts and military operations in Kuwait, and they include a defendant formerly serving as the Army's theater food service advisor for Kuwait, Iraq and Afghanistan who pled guilty to bribery, and a former subcontracts manager for Kellog, Brown & Root who pleaded guilty to major fraud against the United States and conspiracy to commit money laundering.

The Department formed the National Procurement Fraud Task Force in October of last year. The task force has been and will continue to focus on the objectives and missions articulated in my written statement. To accomplish these objectives, the task force has created working committees to address particular issues, such as legislation, training and private-sector outreach relating to procurement fraud. Each committee is chaired by a high-level member of the Inspector General community or the FBI.

In conclusion, the Justice Department has already taken significant steps to improve the effectiveness of Federal law enforcement in this area and will continue to maintain the investigation and prosecution of procurement fraud as a priority. We look forward to working with the Subcommittee in this area.

I will do my best to answer any questions you may have.

[The prepared statement of Mr. Sabin follows:]

PREPARED STATEMENT OF BARRY M. SABIN

STATEMENT

OF

BARRY M. SABIN
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION
DEPARTMENT OF JUSTICE

BEFORE THE
SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING
WAR PROFITEERING AND OTHER CONTRACTOR CRIMES COMMITTED OVERSEAS

PRESENTED ON
JUNE 19, 2007

Statement of
Barry M. Sabin
Deputy Assistant Attorney General
Criminal Division
Department of Justice

Before the
Subcommittee on Crime, Terrorism, and Homeland Security
United States House of Representatives
Concerning
War Profiteering And Other Contractor Crimes Committed Overseas
June 19, 2007

Thank you for the opportunity to be here today to discuss the Department's views on the War Profiteering Prevention Act of 2007 (S. 119) and the efforts of the Department of Justice to combat fraud relating to increased government spending on national security, and particularly procurement fraud relating to spending on the wars and rebuilding efforts in Iraq and Afghanistan.

I would like to reiterate the Department's commitment to a strong and vigorous enforcement effort in this important area and address three primary points. First, the Department of Justice has made the investigation and prosecution of procurement fraud, including procurement fraud related to the wars in Iraq and Afghanistan, and the rebuilding of those countries, a priority and has devoted significant prosecutorial and investigative resources to that effort. Second, the Department is working through the International Contract Corruption Task Force ("ICCTF"), including the Army Criminal Investigation Division ("Army CID"), the Defense Criminal Investigative Service ("DCIS"), the Federal Bureau of Investigation ("FBI"), the Special Inspector General for Iraq Reconstruction (SIGIR"), as well as the Internal Revenue Service Criminal Investigation Division and other Inspectors General, and traditional law enforcement partners, to investigate and prosecute such procurement fraud and has already developed a track-record of success in this area. Third, in order to leverage law enforcement resources and more effectively investigate and prosecute procurement fraud, the Department formed the National Procurement Fraud Task Force (the "Task Force") last year. The Task Force is off to a successful start, has formed key working committees, and is already working to identify and remove barriers to preventing, detecting and prosecuting procurement fraud.

I would also like to take this opportunity to recognize the work of the many Department of Justice employees and contractors who are actively involved in the important work of stabilization and reconstruction in Iraq. Numerous Department employees have voluntarily agreed to place themselves in harm's way alongside their military and other U.S. Government counterparts to help the Iraqi people rebuild the country's legal structure. Some are working as part of the Criminal Division's International Criminal Investigative Training Assistance Program to support both the Department of Defense's police training program and the Iraqi Ministry of Justice's program to mentor the Iraqi Corrections Service. A team of ICITAP trainers/mentors is also helping develop capacity for the Iraqi Commission on Public Integrity to conduct complex anti-corruption investigations. Other DOJ personnel are assigned with the Criminal Division's

Office of Overseas Prosecutorial Development, Assistance and Training to assist the Iraqi Higher Juridical Council, Iraqi prosecutors, and the Central Criminal Court of Iraq with the development and implementation of justice sector programs. Others are working in the Regime Crime Liaison's Office to support the Iraqi Higher Tribunal in its investigation and prosecution of senior-level former regime officials for war crimes and other offenses. In addition, law enforcement agents from the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, the Drug Enforcement Administration and the U.S. Marshals Service work daily in support of both the law enforcement and justice sectors to help improve Iraq's capacity to address the security challenges it faces. The Department appreciates and recognizes the fine work of these brave individuals.

I. The Department Has Made the Prosecution of Procurement Fraud, Including Fraud Related to the Wars in Iraq and Afghanistan, and the Rebuilding of those Countries, a Priority

Since the events of September 11, 2001, the United States government has increased spending to address homeland security concerns and to fight terrorism abroad, including the ongoing wars in Iraq and Afghanistan, as well as rebuilding efforts in those countries. As spending increases, more tax dollars are put at risk of fraud. As a result of the increased spending, the Department of Justice recognizes that the need to detect, investigate, and prosecute procurement fraud and related public corruption offenses also has increased.

The Department of Justice has taken an aggressive, proactive leadership position to help ensure that dollars from the public treasury are used for the purpose to which they have been appropriated and not to line the pockets of corrupt individuals or companies. We take that responsibility seriously. At this time, when our national security is a paramount concern, criminals who cheat the government must be identified, stopped and punished. Working with the inter-agency community, the Department has demonstrated this commitment at the investigative and prosecution stages for both civil and criminal matters.

The Department of Justice has established a unified and coordinated approach to combat procurement fraud, including fraud relating to the wars in Iraq and Afghanistan and reconstruction efforts in those countries. The Department has devoted a panoply of resources and expertise to this important mission. The Fraud Section, the Public Integrity Section, the Asset Forfeiture and Money Laundering Section, and the Office of International Affairs of the Criminal Division, and the Fraud Section of the Civil Division, are each involved in the fight against procurement fraud and each contributes its resources and unique expertise. The Fraud Section, which has well-established relationships with many Inspectors General, particularly the Department of Defense Inspector General, and has prosecuted numerous procurement fraud cases in the past, leads the effort to combat fraud. The Public Integrity Section also has long-standing relationships with the Inspector General community and participates in investigations that involve corruption by government or military officials, as many procurement fraud cases do. The Asset Forfeiture and Money Laundering Section leads the effort to recover taxpayer dollars stolen through procurement fraud by assisting in the swift and comprehensive use of seizure warrants and forfeiture remedies.

The attorneys from the Criminal Division work closely at Main Justice with their colleagues in the Antitrust Division, who also prosecute cases that involve bid-rigging or other anti-competitive behavior in the awarding of contracts. The close physical proximity of the Criminal Division sections and the Antitrust Division in Washington, D.C., allows effective coordination, staffing, and tracking of investigations relating to Iraq and Afghanistan. Subject to applicable limitations on parallel proceedings, attorneys within the Criminal Division also review *qui tam* and other cases litigated by the Civil Division to determine whether they are appropriate for criminal prosecution.

The criminal prosecutors at Main Justice are joined in this effort by their counterparts in the Civil Division. Department of Justice attorneys in the Commercial Litigation Branch of the Civil Division enforce the False Claims Act, other federal statutes, and common law remedies to address all types of procurement fraud, including overcharging, defective pricing, quality deficiencies, product substitution, and bribery and corruption statutes. These actions often result in the recovery of significant funds. For example:

- On June 30, 2006, Boeing agreed to pay a civil settlement of $565 million to settle claims relating to its improper procurement and use of competitors' proprietary information in connection with Air Force and NASA rocket launch contracts, and also relating to a conflict of interest involving a high level former Air Force procurement official.

- In October 2006, the Civil Division settled a case involving allegations that PeopleSoft made pricing disclosures to GSA that were not current, accurate and complete concerning the sale of software licenses and related maintenance services. Oracle agreed to pay the United States $98.5 million as part of the settlement.

- On May 14, 2007, a jury returned a verdict in favor of the United States against Bill Harbert International Construction, Inc., and other related entities, for over $34 million in single damages for violating the False Claims Act by rigging bids on three water and sewer construction contracts in Egypt that were financed by the Agency for International Development.

In addition, U.S. Attorney's offices throughout the country are devoting resources to this effort and have brought numerous criminal and civil procurement fraud cases. Many United States Attorney's offices have a wealth of procurement fraud expertise. They are bringing it to bear on many high-profile and sophisticated procurement fraud cases, such as the cases handled by the LOGCAP Working Group in the Central District of Illinois, discussed more fully below.

II. The International Contract Corruption Task Force Was Established to Coordinate a Comprehensive Approach to International Corruption and Procurement Fraud Cases

The Department -- both prosecutors and the FBI -- has been and is working closely with and through the ICCTF, other Inspectors General, and other traditional law enforcement partners to investigate and prosecute procurement fraud relating to the wars in Iraq and Afghanistan and

the rebuilding of those countries. The ICCTF was established in October, 2006 as an operational task force consisting of the following charter agencies: FBI, Army CID Major Procurement Fraud Unit, Department of Defense, Inspector General, DCIS, Department of State, Office of Inspector General (DOS-OIG), United States Agency for International Development, Office of Inspector General (USAID-OIG) and the Special Inspector General for Iraq Reconstruction (SIGIR). The mission of the ICCTF is that of a joint agency task force that deploys criminal investigative and intelligence assets world wide to detect and investigate corruption and contract fraud resulting primarily from the War on Terrorism. This task force is led by a Board of Governors derived from senior agency representatives who operate all major War on Terrorism cases to defend the interests of the United States overseas.

Procurement fraud cases, especially those involving the wars in Iraq and Afghanistan, are usually very complex and resource intensive. The cases often involve extraterritorial conduct as well as domestic conduct, requiring coordination between appropriate law enforcement agencies. In order to improve coordination and information sharing, the ICCTF has established a Joint Operations Center based in Washington D.C. The Joint Operations Center currently serves as the nerve center for the collection and sharing of intelligence regarding corruption and fraud relating to funding for the Global War on Terror. The Joint Operations Center will coordinate intelligence-gathering, deconflict case work and deployments, disseminate intelligence, and provide analytic and logistical support for the ICCTF agencies. The Joint Operations Center forms the vital link into the entire intelligence community and provides a repository from which to disseminate intelligence indicative of criminal activity.

Moreover, investigating the international component often proves difficult due to the need to cooperate with foreign law enforcement officials and due to the burden of providing adequate security to prosecutors and investigators working abroad. Indeed, the difficulty of locating and collecting evidence and interviewing witnesses in an active combat zone cannot be overstated.

Despite these challenges, the Department of Justice will continue to investigate and prosecute procurement cases relating to the wars and reconstruction in Iraq and Afghanistan and will pursue these cases wherever the evidence leads. The Department already has seen several instances where wrongdoing by one group of individuals has led to a far-reaching investigation that netted other culprits and resulted in additional criminal charges. As of June 19, 2007, the Department has charged 25 individuals criminally for public corruption and government fraud relating to the Global War on Terror, which includes matters involving Iraq, Kuwait, and Afghanistan. Seventeen of these individuals have been convicted (seven are awaiting sentencing). The other eight individuals have charges pending either though indictments or criminal complaints.

For example, on February 1, 2007, U.S. Army Colonel Curtis G. Whiteford, U.S. Army Lt. Colonels Debra M. Harrison and Michael B. Wheeler, and civilians Michael Morris and William Driver were indicted for various crimes related to a scheme to defraud the Coalition Provisional Authority - South Central Region (CPA-SC) in al-Hillah, Iraq. All of these projects

involved Iraqi money overseen by CPA. Whiteford was once the second-most senior official at CPA-SC. Wheeler was an advisor for CPA projects for the reconstruction of Iraq.

Previously, on August 25, 2006, Bruce D. Hopfengardner, a Lieutenant Colonel in the United States Army Reserves, pleaded guilty to conspiracy to commit wire fraud and money laundering in connection with a scheme to defraud the CPA-SC in Al-Hillah, Iraq. This involved Iraqi money overseen by CPA. In his guilty plea, Hopfengardner admitted that, while serving as a special advisor to the CPA-SC, he used his official position to steer contracts to a U.S. citizen in return for various things of value, including $144,500 in cash, more than $70,000 worth of vehicles, a $2,000 computer and a $6,000 watch. Hopfengardner and his co-conspirators laundered more than $300,000 through various bank accounts in Iraq, Kuwait, Switzerland, and the United States. Finally, Hopfengardner admitted that he stole $120,000 in Iraqi money from the CPA-SC that had been designated for use in the reconstruction of Iraq and smuggled the stolen currency into the United States aboard commercial and military aircraft. Hopfengardner's sentencing is pending.

The charges against the above individuals stem from an investigation into illegal conduct by Robert Stein, CPA-SC's Comptroller and Funding Officer, and Philip Bloom, a U.S. citizen who resided in Romania and Iraq. Both have pleaded guilty to conspiracy, bribery, and money laundering in connection with a scheme to defraud the CPA of Iraqi money, and Stein also pleaded guilty to possession of machine guns and being a felon in possession of a firearm in connection with the scheme to defraud the CPA. Bloom admitted that from December 2003 through December 2005, he along with Robert Stein and numerous public officials, including several high-ranking U.S. Army officers, conspired to rig the bids on contracts being awarded by the CPA-SC funded by seized Iraqi assets so that all of the contracts were awarded to Bloom. The total value of the contracts awarded to Bloom exceeded $8.6 million. Bloom admitted paying Stein and other public officials more than $2 million in proceeds from the fraudulently awarded bids and at least $2 million in stolen money from the CPA in order to conceal the source and origin of the funds. On January 29, 2007, Stein was sentenced to nine years in prison and three years of supervised release, and ordered to pay $3.6 million in restitution and forfeit $3.6 million in assets. On February 16, 2007, Bloom was sentenced to 48 months in prison and two years of supervised release, and ordered to pay $3.6 million in restitution and forfeit $3.6 million in assets.

The Department worked closely with SIGIR and other law enforcement agencies to investigate and prosecute these cases. The agents have done excellent work under very trying circumstances and the Department appreciates and thanks them for their effort.

The LOGCAP Working Group, which operates out of the U.S. Attorney's Office in the Central District of Illinois, has also filed criminal charges against eight individuals for bribery and kickbacks associated with Iraq reconstruction efforts and military operations in Kuwait. Logcap III is a ten-year competitively awarded contract to Kellog, Brown, and Root (KBR) in December 2001, and services task orders issued by the U.S. Army to support Operation Iraqi Freedom. The cases relating to the Logcap contract involve bribery in the issuance of task orders and include, but are not limited to, the following:

- Peleti Peleti Jr., formerly serving as the Army's Theatre Food Service Advisor for Kuwait, Iraq, and Afghanistan, pleaded guilty on February 9, 2007, to bribery. Peleti's sentencing is pending.

- Stephen Seamans, formerly a subcontracts manager for KBR, pleaded guilty to an Information charging him with one count of major fraud against the United States and one count of conspiracy to commit money laundering. He was sentenced on December 1, 2006, to 12 months and one day in prison and ordered to pay $380,130 in restitution.

- Glenn Powell, formerly a subcontracts manager for KBR, pleaded guilty to an information charging him with one count of major fraud against the Unites States and one count of violation of the Anti-Kickback Act. He was sentenced on November 18, 2005, to 15 months in prison and ordered to pay $90,973.99 in restitution.

- Shabbir Khan, formerly Director of Operations, Kuwait and Iraq, for KBR subcontractor Tamimi Global Co., Ltd., was indicted on multiple counts of wire fraud, witness tampering, conspiracy to commit witness tampering, conspiracy to commit money laundering, and making false statements. He pleaded guilty and was sentenced on December 1, 2006, to 51 months in prison and ordered to pay a $10,000 fine and $133,860 in restitution.

- Christopher Cahill, formerly the Middle East and India Vice President for Eagle Global Logistics, Inc. ("EGL"), pleaded guilty to an Information charging him with major fraud against the United States. He was sentenced on August 30, 2006, to 30 months in prison and ordered to pay a $10,000 fine. A civil settlement with EGL arising from the same facts resulted in a settlement of $4 million on August 6, 2006.

As mentioned above, the cases prosecuted to date indicate that procurement fraud cases are often far-reaching and complicated. They may involve numerous actors and wrongdoers and span a long period of time. In addition, the cases include an international component that may slow the investigation. As a result, the cases are usually resource intensive and take time to investigate. However, the Department is committed to devoting the resources necessary to build and prosecute these cases, whether against individuals or the companies for which they work. The Department, through the ICCTF, will continue to aggressively investigate and prosecute fraud related to the war and rebuilding efforts in Iraq and Afghanistan.

III. The Department of Justice Formed the Procurement Fraud Task Force in Order to Investigate and Prosecute Procurement Fraud More Effectively

In order to better identify, investigate, and prosecute fraud against the government, including procurement fraud related to the wars in Iraq and Afghanistan and the rebuilding efforts in those countries, the Department formed the Task Force in October 2006. The Task

Force's mission is to combat procurement fraud, including procurement fraud associated with government spending on the wars and rebuilding efforts in Iraq and Afghanistan. The Task Force is led by the Deputy Attorney General and the Assistant Attorney General for the Criminal Division. Steve A. Linick, who spearheaded a procurement fraud task force in the Eastern District of Virginia, is now a Deputy Chief in the Fraud Section and has been named as the Director of the Task Force. Brian Miller, the Inspector General of the General Services Administration, is the Vice-Chair of the Task Force.

The Task Force is designed to leverage the resources of the federal law enforcement community by utilizing the Inspectors General, including SIGIR, in addition to traditional law enforcement partners. The Task Force includes the Inspectors General from the following agencies: the Department of Justice, Department of Defense, the General Services Administration, the Department of Homeland Security, the Department of the Treasury, the Small Business Administration, National Aeronautics and Space Administration, the Central Intelligence Agency, the National Reconnaissance Office, the Department of State, the Department of the Interior, the Department of Energy, the National Science Foundation, the Department of Veterans Affairs, the Social Security Administration, the U.S. Postal Inspection Service, the Office of the Director of National Intelligence, and the Department of Agriculture, among others.

The Task Force capitalizes on two recent changes that affect the Inspector General community. First, the Homeland Security Act (P.L. 107-296) conferred statutory law enforcement authority on the offices of the Inspectors General ("OIGs"). Second, the Attorney General implemented the Attorney General's Guidelines for OIGs with Statutory Law Enforcement Authority. As a result, OIG special agents now have statutory law enforcement authority to carry out their law enforcement functions in the same manner as other special agents within the law enforcement community, including the authority to serve subpoenas, seek and execute arrest warrants, make arrests and carry firearms.

The Task Force has been and will continue to focus on the following objectives relating to procurement fraud:

(1) Increase coordination and strengthen partnerships among all Inspectors General, law enforcement, and the Department of Justice to more effectively fight procurement fraud;
(2) Assess existing government-wide efforts to combat procurement fraud;
(3) Increase and accelerate civil and criminal prosecutions, and administrative actions, to recover ill-gotten gains resulting from procurement fraud;
(4) Educate and inform the public about procurement fraud;
(5) Identify and remove barriers to preventing, detecting, and prosecuting procurement fraud;
(6) Encourage greater private sector participation in the detection and prevention of procurement fraud; and
(7) Evaluate and measure the performance of the Task Force to ensure accountability.

To accomplish these objectives, the Task Force has created working committees to address particular issues relating to procurement fraud. Each committee is chaired by a high-level member of the Inspector General community or the FBI. These working committees focus on the following areas relevant to improving law enforcement effectiveness in areas relating to procurement fraud:

- Training: to develop and implement effective procurement fraud training for auditors, investigators and prosecutors, chaired by David Williams, Inspector General of the U.S. Postal Service;
- Legislation: to review existing laws and procedures and recommend appropriate legislative and regulatory reform, co-chaired by Richard Skinner, Inspector General of the Department of Homeland Security, and Brian Miller, Inspector General of GSA;
- Information-Sharing: to improve the government's ability to detect, prevent and prosecute procurement fraud through improved collection, analysis and sharing of data; also chaired by Brian Miller;
- Intelligence: to improve the Intelligence Community's ability to detect, prevent and investigate procurement fraud through sharing of information and assisting investigators in gaining access to information, co-chaired by Ned Maguire, Inspector General of the Office of the Director of National Intelligence, and Peter Usowski, Inspector General of the National Geospatial-Intelligence Agency;
- Grant Fraud: to ensure that effective investigation, prevention and detection practices are in place to address grant fraud, chaired by Glenn Fine, Inspector General for the Department of Justice;
- Private-Sector Outreach: to establish a dialogue with the private sector in order to ensure their meaningful participation in the prevention and detection of procurement fraud, co-chaired by Eric Thorson, Inspector General of the Small Business Administration and Eric Feldman, Inspector General of the National Reconnaissance Office; and
- International Procurement Fraud (including the wars in Iraq and Afghanistan): to ensure that appropriate coordination and procedures are in place in order to combat procurement fraud in the international arena, especially in theatres of armed conflict, chaired by FBI Assistant Director CID Kenneth Kaiser.

The Private Sector Outreach Committee seeks to enlist private sector participation in the prevention and detection of procurement and grant fraud by encouraging early disclosure of fraudulent activity on U.S. Government contracts to the Inspector General community. In furtherance of this goal, the Committee has prepared a standard briefing that both Committee and Task Force members have been using to communicate the merits of active private sector participation in the prevention and detection of procurement fraud. To date, members from the Task Force and the Private Sector Outreach Committee have made presentations to corporate officers/business ethics compliance organizations (namely, Northrup Grumman Information Technology Managers and Lockheed Martin ethics officials), corporate councils and professional organizations (namely, the Professional Services Council, the American Bar Association, the Defense Industry Initiative, the Washington Corporate Counsel for Business Ethics, and the

Construction Industry Roundtable), and public interest groups (namely, Taxpayers against Fraud).

The Training Committee is developing an eight-day course for federal agents and auditors on how to investigate procurement and grant fraud cases. The course will begin in the Fall of 2007 and will be held at the Federal Law Enforcement Training Center in Glenco, Georgia. The Grant Fraud Committee is collaborating with the Training Committee to include a training component on grant fraud at this course. Additionally, the Task Force recently hosted a three-day course for federal prosecutors on how to more effectively investigate and prosecute procurement fraud cases. The course was held on June 13-15, 2007, at the National Advocacy Center in Columbia, South Carolina. Moreover, in collaboration with the Training Committee, the International Procurement Fraud Committee is developing a training course for agents and prosecutors to improve the investigation and prosecutions of contracting fraud occurring in Iraq, Afghanistan, and Kuwait.

The Task Force has also formed numerous regional working groups to ensure that the Task Force encourages the investigation and prosecution of procurement fraud nationwide. The regional working groups are centered in areas of significant procurement activity. To date, regional working groups have been formed in 14 districts or regions across the country, including in the Eastern District of Pennsylvania, the Central District of California, the Southern District of Florida, and the Eastern District of New York. The Director of the Task Force coordinates the efforts of these regional working groups.

Since its inception, the Task Force has been enthusiastically embraced by the entire federal law enforcement community, including the IRS, FBI, the Inspectors General and the defense-related agencies. The Task Force has already held three full meetings and more than 125 people representing more than 30 federal agencies attended each of those meetings.

In addition, all of the working committees have met and have drafted mission statements and strategic plans to accomplish their respective missions. We are currently aware of more than 150 civil or criminal procurement fraud cases that have been resolved or indicted since the Task Force was created. Although the Task Force cannot claim credit for all of these cases, we believe that the creation of the Task Force has invigorated procurement fraud prosecutions. The procurement fraud cases are summarized on the Task Force's website at http://www.usdoj.gov/criminal/npftf/.

IV. The Department's Views on the War Profiteering Act

While the Department welcomes the enactment of new tools to combat fraud committed by military contractors, which is a priority area enforcement area for the Department, the Department is concerned that enactment of certain provisions S. 119 may have a negative impact upon existing criminal statutes. We welcome the opportunity to work with Committee staff to address these concerns. Currently, the Department has a number of powerful statutes which are not limited to specific international undertakings by the United States, but which have universal application to all fraudulent schemes undertaken against the United States, including those

schemes associated with war profiteering. The Department is concerned that the enactment of criminal statutes (such as S. 119) that are targeted to fraud occurring during particular events may have the unintended consequence of eroding the application of our time-tested general fraud statutes to specific events, setting the precedent that fraud in each new situation requires enactment of its own new fraud statute before effective prosecution can be undertaken.

The Department has had great success in prosecuting contractor fraud under United States Code Title 31, Section 5332 (bulk cash smuggling), Title 41, Section 51 et. seq. (the Anti-Kickback Act), and Title 18, Sections 1031 (major fraud against the United States), 1001 (false statements made in any matter within the jurisdiction of the United States), 1956 and 1957 (money laundering), 1341 (mail fraud) and 1343 (wire fraud), among others (hereinafter the "general fraud statutes"). To the extent that problems have surfaced in applying these statutes or others to the types of criminal procurement fraud associated with war profiteering, we welcome the opportunity to discuss amendments to the general fraud statutes that may provide options for eliminating some of those obstacles.

Likewise, if the Committee proceeds with the enactment of S. 119, we would welcome the opportunity to work with your staff to eliminate several technical problems with the current language which might weaken our ability to successfully use these provisions.

V. Conclusion

The Department of Justice recognizes that it is imperative that we deter, investigate and prosecute procurement fraud by unscrupulous companies and individuals whose theft of critically-needed resources threatens our safety and defense. The Department has already taken significant steps to improve the effectiveness of federal law enforcement in this area and will continue to maintain the investigation and prosecution of procurement fraud as a priority.

Mr. SCOTT. Thank you very much.

Mr. Grayson?

TESTIMONY OF ALAN GRAYSON, GRAYSON & KUBLI, P.C., McLEAN, VA

Mr. GRAYSON. Good afternoon, and thank you very much for the opportunity to be here today and to speak before this honorable Subcommittee.

My name is Alan Grayson. I am an attorney, and I represent whistleblowers in numerous cases involving fraud by government contractors in Iraq. At the moment, there are only four such cases in litigation that have been unsealed, and I am attorney of record in all four of them. There are three of them against KBR.

Needless to say, there have been far more than four instances of war profiteering in Iraq. Billions of dollars are missing, and many billions more wasted. How it came be that only four such cases are unsealed and in litigation and how it is that even in those four cases, the Bush Administration is not participating are the subject of my testimony today.

As I will explain, in our 5th year in the war in Iraq, the Bush administration has not litigated a single case against any war profiteer under the False Claims Act.

For over a century, war profiteering cases have been brought under the Civil False Claims Act. This statute was enacted in 1863 to combat war profiteering during the Civil War. Lawyers often refer to that statute as the Lincoln law.

In 1986, when Congress enacted Congressman Howard Berman's amendments to the Civil False Claims Act, it lauded the act as the "government's primary litigative tool for combating fraud," and the Supreme Court has recognized the Civil False Claims Act is intended to reach all types of fraud, without qualification, that result in financial loss to the government.

The Civil False Claims Act imposes treble damages and penalties on war profiteers, and the threat of having to pay three times what you steal can be a real deterrent, if that threat is perceived as real.

Moreover, the Civil False Claims Act deputizes whistleblowers to bring lawsuits in the name of the U.S. Government against war profiteers. The whistleblowers can keep between 15 percent and 30 percent of the recovery, but with treble damages, the government ends up well ahead.

The Civil False Claims Act yielded total recoveries of over $3 billion last year alone. But in Iraq, where there has been war and war profiteering for over 4 years, the total recovery to date is less than $6 million—in the midst of what Senator Dorgan rightly has called an orgy of greed by military contractors.

Why has the Civil False Claims Act so far been unsuccessful in punishing and preventing war profiteering committed in Iraq, and what can be done to change that?

One reason is that the Bush administration has swept cases under the rug by obtaining and perpetuating court orders sealing the cases. These orders allow the Administration to threaten whistleblowers with dismissal of their cases or contempt of court simply for telling people what they know.

To prevent the abuse of this sealing provision, which is only supposed to be in effect for 60 days—but, in this case, 60 days becomes 60 weeks and almost 60 months—there needs to be a firm limit on extensions of the seal. Clearly, 1 year is enough. The seal is meant to help to uncover fraud, not to bury it.

A second reason why the Civil False Claims Act has been unsuccessful in punishing and preventing war profiteering in Iraq is that after cases are unsealed, the courts create and apply rules to the cases that have no basis in the statute. For instance, the act punishes anyone who knowingly makes, uses or causes to be made or used a false record or statement to cause a false claim to be paid or approved by the government.

Last year, in our Custer Battles case, the first Iraq war profiteering case to go trial, a jury found the defendants guilty of over 40 acts of fraud, but the judge suspended the verdict because he added a presentment requirement, a requirement that simply does not exist in the statute.

Long ago, the U.S. Supreme Court said the courts should refuse to accept any rigid restrictive reading of the Civil False Claims Act, but that is exactly what is happening. Based on my experience, Congress needs to make the Supreme Court's wise words law by providing that the act shall be broadly and liberally construed, in accordance with its remedial purpose. Other acts have that language; and this act needs it.

Thanks to Congress, the Civil False Claims Act already makes it clear that a defendant's knowledge of the fraud is all that is required, not the specific intent to defraud, and only a preponderance of the evidence of that is required.

What is needed now is for Congress to provide that, for a complaint under the Civil False Claims act, only a short and plain statement of the claim showing that the pleader is entitled to relief is required. That is the normal standard under Federal Civil Rule 8(a). It is the standard when a contractor sues the government, and it would be the standard when the government sues a contractor, if the lower courts had not imposed a higher standard.

Now a third reason why the Civil False Claims Act has been unsuccessful in punishing and preventing war profiteering is that the Bush administration has done virtually nothing to pursue such cases. It has settled two cases without litigation for pennies on the dollar, and it declined to prosecute 10 more. All the rest remain under seal.

As I said before, in our 5th year of the war in Iraq, the Bush administration has not litigated a single case against any war profiteer under the False Claims Act. For all the Bush administration claims to do in the war on terrorism, it is a no-show in the war against war profiteers.

Congress needs to fix that flaw by providing that the executive branch's see-no-evil-hear-no-evil-speak-no-evil policy regarding fraud perpetrated against the soldiers and the taxpayers in a war zone is no longer an option. I recommend that the False Claims Act be amended to provide that the Administration shall participate in all war profiteering cases, whenever the whistleblower complaint establishes a prima facie case of fraud. Both the troops and the taxpayers deserve no less.

Fraud against the taxpayers is bad enough, but when that fraud is committed against the U.S. Army, engaged in battle, it is intolerable. As Lincoln said 144 years ago, "Worse than traitors in arms are the men who pretend loyalty to the flag, feast and fatten on the misfortunes of the nation, while patriotic blood is crimsoning the plains, and their countrymen moldering in the dust."

For 4 years, I have fought the war profiteers who have been feasting and fattening on our misfortune. Let us acknowledge how far we have fallen from President Lincoln's standards and ideals and amend the Lincoln law to remind this President and future Presidents of their constitutional duty to see that the laws are faithfully executed.

Thank you very much.

[The prepared statement of Mr. Grayson follows:]

PREPARED STATEMENT OF ALAN GRAYSON

Good afternoon. Thank you very much for the opportunity to be here today, and to speak before this honorable Subcommittee.

My name is Alan Grayson. I'm an attorney. I represent whistleblowers in numerous cases involving fraud by government contractors in Iraq. At the moment, there are only four such cases in litigation that have been unsealed, and I am attorney of record in all four of them. Three of them are against KBR.

Needless to say, there have been far more than four instances of war profiteering in Iraq. Billions of dollars are missing, and many more billions wasted. How it came be that only four such cases are unsealed and in litigation—and how it is that even in those four cases, the Bush Administration is not participating—are the subjects of my testimony today.

War profiteering cases often are brought under the Civil False Claims Act. This statute was enacted in 1863, to combat war profiteering during the Civil War. Lawyers often refer to the statute as the "Lincoln Law."

In 1986, when Congress enacted Congressman Howard Berman's amendments to the Civil False Claims Act, it lauded the Act as the "Government(s primary litigative tool for combating fraud."[1] The U.S. Supreme Court has recognized that the Civil False Claims Act is "intended to reach all types of fraud, without qualification, that might result in financial loss to the Government."[2]

There are criminal laws, such as mail fraud, wire fraud, false statements, and criminal false claims statutes, that could be used to address war profiteering.[3] These laws do little to punish war profiteering corporations, however. There are several reasons for this. First, the burden of proof—beyond a reasonable doubt—may be difficult to establish. Second, corporations cannot be incarcerated. Third, the fines often are so small that crime does pay.

The Civil False Claims Act, in contrast, imposes treble damages and penalties on war profiteers. The threat of having to pay three times what you steal can be a real deterrent.

Moreover, the Civil False Claims Act "deputizes" whistleblowers to bring lawsuits in the name of the U.S. Government, against war profiteers. The whistleblowers can keep between 15% and 30% of the recovery, but with treble damages, the U.S. Government ends up well ahead.

The Civil False Claims Act yielded total recoveries of over $3 billion last year alone.[4] Yet in Iraq, where there has been war and war profiteering for over four years, the total recovery to date is less than $6 million—in the midst of what Senator Dorgan rightly has called "an orgy of greed" by military contractors. Why has the Civil False Claims Act so far been unsuccessful in punishing or preventing war profiteering committed in Iraq? And what can be done to change that?

One reason is that the Bush Administration has swept such cases under the rug, by obtaining and perpetuating court orders sealing the cases. These orders allow the

[1] S. Rep. No. 99–345, at 2 (1986).

[2] *United States v. Neifert-White Co.,* 390 U.S. 228, 232 (1968).

[3] 18 U.S.C. 287, 1001, 1341 & 1343 (2000).

[4] "Justice Department Recovers Record $3.1 Billion in Fraud and False Claims in Fiscal Year 2006," DOJ News Release (Nov. 21, 2006), www.usdoj.gov/opa/pr/2006/November/06__civ__783.html

Administration to threaten whistleblowers with dismissal of their cases, or even contempt of court, for simply telling people what they know.

According to SIGIR information, most of the Civil False Claims Act cases filed regarding war profiteering in Iraq remain under seal. The False Claims Act requires whistleblower cases to be kept under seal for 60 days.[5] Thanks to extensions that the Bush Administration has obtained, those 60 days have become 60 weeks, and are heading toward 60 months. Although the judges almost always rubber-stamp these extensions, in one recent case against KBR, the judge refused to do so, and the case was unsealed.

To prevent the abuse of the sealing provision, there should be a firm limit on extensions. Certainly, one year is enough. If the Executive Branch simply wants more time to investigate a case, and can show good cause, it might have that extra time, but not at the expense of keeping the public and Congress in the dark. The seal is meant to help uncover fraud, not to bury it.

A second reason why the Civil False Claims Act has been unsuccessful in punishing and preventing war profiteering in Iraq is that after cases are unsealed, the courts create and apply rules to the cases that have no basis in the statute. For instance, the Act punishes anyone who "knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government."[6] Last year, in our Custer Battles case "the first Iraq war profiteering case to go trial," a jury found the Defendants guilty of over 40 acts of fraud. The judge suspended the verdict, however, because he added a "presentment" requirement—a requirement that simply doesn't appear in the statute.

Another recent case alleged that KBR, under its infamous cost-plus LOGCAP Contract, ran empty trucks back and forth across the desert in Iraq, in order to run up the bill on the taxpayers. The judge dismissed the 24-page complaint because, he said, it wasn't "specific" enough. Yet this "specificity" requirement also doesn't appear in the statute.

Long ago, the U.S. Supreme Court said that the courts should "refuse[] to accept a rigid restrictive reading" of the Civil False Claims Act, and should "broadly construe[]" it.[7] That is simply not happening. Based on my experience, Congress needs to make the Supreme Court's wise words the law, by providing that the Act shall be liberally construed, in accordance with its remedial purpose. Other Acts have such language; this Act needs it.

Thanks to Congress, the Civil False Claims Act already makes it clear that only a preponderance of the evidence, not "clear and convincing evidence," is required. It also makes it clear that only a defendant's knowledge of the fraud, not a specific intent to defraud, is required.[8] What is needed now is for Congress to provide that as for the Complaint, only "a short and plain statement of the claim showing that the pleader is entitled to relief" is required. This is the normal standard under Federal Rule 8(a), it is the standard when a contractor sues the Government, and it would be the standard when the Government sues a contractor, if the lower courts had not imposed a higher standard on their own.

A third reason why the Civil False Claims Act has been unsuccessful in punishing and preventing war profiteering in Iraq is that the Bush Administration has done virtually nothing to pursue such cases. It has settled two cases, without litigation, for pennies on the dollar. It has declined to prosecute nine more cases. All the others remain under seal. In our fifth year of the War in Iraq, the Bush Administration has not litigated a single case against any war profiteer under the False Claims Act. It evidently has not even sued any U.S. contractor in Iraq, for breach of contract. Two years ago, Senator Grassley wrote to the Attorney General, asking why the Administration was taking no action in such cases. There was no reply. For all the Bush Administration claims to do in the war against terrorism, it is a no-show in the war against war profiteers.

It appears the Civil False Claims Act has a flaw that remained hidden for 138 years, but is now apparent—it gives a do-nothing Administration the opportunity to do nothing. Congress can try to fix that flaw by providing that the Executive Branch's "see no evil, hear no evil, speak no evil" policy regarding fraud perpetrated against the soldiers and the taxpayers—in a war zone—is no longer an option. I recommend that the False Claims Act be amended to provide that the Administration shall participate in all war profiteering cases, whenever the whistleblower complaint

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[5] 31 U.S.C. 3730(b)(2) (2000).
[6] 31 U.S.C. 3729(a)(2) (2000).
[7] *Niefert-White,* 390 U.S. at 786 & 788.
[8] 31 U.S.C. 3729(b) (2000).

establishes a prima facie case of fraud. Both the troops and the taxpayers deserve no less.

Fraud against the taxpayers is bad enough. But when that fraud is committed against the U.S. Army, engaged in battle, it is intolerable. As Lincoln said, 144 years ago, "worse than traitors in arms are the men who pretend loyalty to the flag, feast and fatten on the misfortunes of the Nation, while patriotic blood is crimsoning the plains . . . and their countrymen moldering the dust."

For four years, I have fought the war profiteers, who have been feasting and fattening on our misfortune. The Bush Administration has not fought them, not in the least. Let us acknowledge how far we have fallen from President Lincoln's standards and ideals, and amend the Lincoln Law, to remind this President and future Presidents of their constitutional duty to see that the laws are faithfully executed.

Mr. SCOTT. I want to recognize Mr. Chabot from Ohio who has joined us.

Ms. Razook?

TESTIMONY OF ERICA RAZOOK, LEGAL ADVISOR TO THE BUSINESS AND HUMAN RIGHTS PROGRAM, AMNESTY INTERNATIONAL, NEW YORK, NY

Ms. RAZOOK. Thank you, Mr. Chairman, Ranking Member Forbes, Members of the Subcommittee. My name is Erika Razook, and I am here on behalf of Amnesty International.

Amnesty International has been investigating and reporting on human rights abuses for over 40 years, and one of the most constant themes in our work has been that we see the most horrible and worst abuses when there is a culture of impunity for them, and that is what we have seen in this area of private military and security contractors working on behalf of the United States government in countries around the world and in particular in Iraq and Afghanistan.

Literally, there are over 100,000 contractors in Iraq and Afghanistan alone. Numerous reports of human rights abuses, including torture, cruel and inhumane, degrading treatment, and shootings and killings of innocent civilians have surfaced and have even come to light in the Army's own investigations. Yet, despite these large numbers of contractors and reports of abuse, we have seen only two indictments of abuse by contractors.

What I would like to talk to you briefly about today is the scope of the problem, the lack of prosecution and the environment of impunity for contractor crime abroad, and the solution that Amnesty sees that Congress can take a step toward in the immediate future with the present proposed legislation that is before Congress now.

We have been in dialogue with both government agencies that are contracting private military and security firms and with the companies themselves, and we understand that the companies are working in a difficult and complex environment, inherently risky to work in.

However, the problem here and the problem that we see is that there is virtually no control or oversight over these contracted personnel, which has led to this environment of impunity, where a contractor can shoot an Iraqi civilian in the street who later dies and never sees any punishment, redress or prosecution.

It is essential that the Department of Justice prosecutes cases of criminal misconduct of contractors. To continue to allow cases of human rights abuses to languish on the court's dockets, as they have been in the Eastern District of Virginia where there are 17

cases of detainee abuse which have been on the court's docket since 2004, is to sanction impunity and to deny meaningful access to justice to the victims of these abuses.

But, right now, Congress has an opportunity before it to take a step forward to address this problem of impunity, and that is why Amnesty is supporting Representative Price's H.R. 369 and H.R. 2740.

There are three crucial areas that these bills address and that I will discuss briefly here.

First is the expansion of the Military Extraterritorial Jurisdiction Act, otherwise known as MEJA. The expansion would cover contractors who are not only supporting a DoD mission, but contractors whose work is carried out in a region where there is a contingency operation.

This is a very important provision because where we have seen the growth of contractors carrying out work for the U.S. Government is not in the more intimately DoD-aligned roles, but in ancillary roles, such as security for reconstruction projects, even border control, and now there is discussion of contractors working in peacekeeping roles as well.

So, for these extended functions, it is necessary that Congress extend the application of MEJA so that these contractors do not escape accountability.

The second is the enforcement mechanisms that are included in H.R. 369 and 2740. These bills establish an FBI investigative unit which would be on the field in the area of the contingency operation. This will help the Department of Justice to overcome the practical hurdles of investigating cases, securing witness testimony and locating evidence.

The third area is the transparency provisions which require reporting of the DOJ to Congress on the number of complaints received, the investigations into these complaints of contractor misconduct, the cases that have been opened, the results of the cases that have been closed, and the capacity and effectiveness of the Department of Justice in prosecuting such misconduct.

These transparency positions are crucial and vital to ensuring accountability for human rights violations because what we have seen thus far is that Congress does not know, the public does not know, and we at Amnesty do not know why these cases have not been prosecuted.

Why have about 3 years passed since the horrendous torture and inhumane treatment at Abu Ghraib, since these pictures came to light, and since the Army investigations indicated that contractor personnel were involved in these abuses? Why have there still not been prosecutions? These transparency provisions will give Congress the power o further legislative and to ensure that these human rights violations do not go unaddressed.

Finally, Amnesty International has previously stated in its 2004 report, Human Dignity Denied, that human rights violations, whether they are committed by military or civilian personnel, should be tried in civilian court, and these civilian trials should conform, of course, to international standards of fair trials, and the death penalty should not be imposed., and I bring that point up be-

cause the death penalty is an option under the UCMJ and under the torture statute.

For these reasons, Amnesty International asks Members of Congress and you particularly in the Subcommittee who are paying careful attention to this issue to pass this very important legislation to close loopholes and to ensure that there is accountability for human rights violations committed by contracted personnel hired by our government.

Thank you.

[The prepared statement of Ms. Razook follows:]

PREPARED STATEMENT OF ERICA RAZOOK

Thank you Mr. Chairman and members of Congress; Amnesty International (AI) is pleased to testify at this important and timely hearing.

SUMMARY

In May of 2006, AI publicly called on the Department of Justice to immediately investigate and, where clear evidence of human rights violations exists, prosecute employees or contractors of private military and security firms operating overseas for their involvement in human rights violations. However, despite the passing of more than a year since Amnesty International made these demands, to date, the same 17 pending cases of detainee abuse, including abuse at Abu Ghraib, by civilians remain languishing on the docket of the U.S. Attorney's Office in the Eastern District of Virginia.

In addition to the cases of detainee abuse, Amnesty International is aware of hundreds of serious incident reports (SIRs) voluntarily filed by contractors, and reported shootings and killings by security contractors that have also apparently been unaddressed by the Justice Department. AI filed a brief in support of the Los Angeles Times' suit requesting that more information in the SIRs be released, which was denied on national security grounds and contract personnel privacy concerns. In this environment of apparent impunity for serious criminal conduct and human rights violations and complete lack of transparency, the U.S. government's reliance on private contractors has grown tremendously, creating a dire need for Congress to establish adequate regulation of the industry. For these reasons, Amnesty International commends the attention the Judiciary Committee is committing to this issue and calls for (i) immediate investigation and prosecution of cases of human rights violations committed by U.S. contractors under currently available law, (ii) expansion of the Military Extraterritorial Jurisdiction Act (MEJA) and other current U.S. law to ensure that security contractors, hired by various agencies of the U.S. government, do not escape accountability and (iii) greater transparency to Congress on the status of cases referred to the Department of Justice, in particular, any circumstances prohibiting it from prosecuting referred cases of contractor criminal conduct.

Amnesty International emphatically supports the Transparency and Accountability in Security Contracting Act of 2007 (H.R. 369) and the MEJA Expansion and Enforcement Act of 2007 (H.R. 2740), introduced by Representative David Price, which contain several important provisions not addressed by the Defense Authorization Act (H.R. 1585), and which largely answer AI's calls for transparency and accountability for human rights violations in private military and security contracting.

CURRENT U.S. LAW PROVIDING FOR JURISDICTION OVER CONTRACTOR CRIME OVERSEAS

The U.S. Justice Department currently has the authority to prosecute civilian contractors for certain crimes committed outside the United States under several U.S. laws, including:

The War Crimes Act. This law, 18 U.S.C. § 2441, criminalizes certain war crimes committed inside or outside the United States by anyone who is a member of the armed forces or is a U.S. national. Under the Act, a war crime includes conduct defined as a grave breach of the Geneva Conventions, or constituting a violation of common Article 3 of the Conventions. The latter prohibits, inter alia, cruel treatment, torture, and outrages upon personal dignity, in particular humiliating and degrading treatment.

The Torture Statute. This law, 18 U.S.C. § 2340, makes it a criminal offense for any U.S. national acting in an official capacity "outside the United States" to commit or attempt to commit torture. The law was enacted in 1994. Anyone who con-

spires to commit the acts prohibited under the statute can be subject to the same penalties as the actual perpetrator. This law, however, defines torture in an arguably narrower way than the U.N. Convention against Torture.

The Military Extraterritorial Jurisdiction Act (MEJA) of 2000. This law, 18 U.S.C. § 3261, criminalizes conduct committed by "members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States" that would be punishable by more than one year's imprisonment if engaged in within the United States. The text of MEJA (18 U.S.C. § 3267(1)(A)) was amended in 2005 to define the term "employed by the Armed Forces outside the United States" to include civilian employees, contractors, or employees of contractors, not only of the Department of Defense, but also of "any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas." The U.S. Attorney's Office in the District of Arizona used MEJA to bring charges against a security contractor for Assault with a Deadly Weapon and Assault Resulting in Serious Bodily Injury in February 2007.

The USA PATRIOT Act. Section 804 of this law, 18 U.S.C. § 7 (9), extends the jurisdiction of U.S. federal courts over military personnel, including civilian contractors, for violations of federal criminal law committed at U.S. facilities abroad. The U.S. Department of Justice has used this provision to bring criminal charges against a CIA contractor who allegedly beat a detainee who later died in custody in Afghanistan. The contractor was indicted by a North Carolina grand jury of Assault with a Dangerous Weapon and Assault Resulting in Serious Bodily Injury, was found guilty of multiple counts of assault and was sentenced to over eight years in prison.

EXPANSION OF LAW SUPPORTED BY AMNESTY INTERNATIONAL

While past abuses by military and some security contractors may be prosecuted under current U.S. law, Amnesty International also supports an expansion of the MEJA and any other U.S. law that would ensure that contractors, who are taking on a growing number of functions, for example in security, border patrol and reconstruction projects, do not escape accountability simply because they may be deemed to not be "supporting the mission of the Department of Defense".

The MEJA Expansion and Enforcement Act of 2007 (H.R. 2740) and its predecessor (H.R. 369) accomplish such an expansion by establishing jurisdiction over all U.S. government contractors, as long as their work is carried out outside of the United States in an Armed Forces contingency operation, compared to the current jurisdiction MEJA grants, over contractors whose work supports a Department of Defense mission. The Judiciary Committee should consider amending language to even further the expansion to all U.S. contractors operating overseas, as long as they are working to support a mission or effort of the U.S. government.

Further, Amnesty International supports a clear establishment of enforcement mechanisms, including organization of any existing enforcement resources, to ensure that prosecutions are not thwarted due to practical problems such as collecting evidence and making available witness testimony. While enforcement mechanisms must be established in accordance with certain Constitutional protections, and with consideration to the sovereignty of the host country, international law recognizes the nationality principle, under which a state may apply and enforce its criminal law outside of its territorial jurisdiction in order to hold accountable its own citizens and people who otherwise avail themselves of its nationality, for their criminal misconduct. The environment of impunity in which tens of thousands of U.S. contractors have been and are currently operating overseas is the exact type of situation necessitating application of this principle.

Thus far, it appears that some investigations overseas have been conducted, leading to the referral of at least twenty cases of detainee abuse to the Department of Justice. However, the status of those cases, and the reason(s) why they have not been acted on in the more than three years they have been on the docket of the U.S. Attorney's Office in Eastern Virginia, are unknown. In order to ensure that victims of human rights abuses have meaningful access to justice, Congress should mandate, in accordance with H.R. 2740, that the Department of Justice report to it the status of cases of contractor misconduct overseas to the extent that, at a minimum, Congress is aware of (i) the number and type of complaints received, (ii) the number of investigations into complaints received, (iii) the number of cases opened, (iv) the number and result of cases closed, and (v) the reasons why prosecutions could not be brought in cases that were not opened.

PREFERENCE OF CIVILIAN PROSECUTIONS OVER APPLICATION OF UNIFORM CODE OF MILITARY JUSTICE

The Uniform Code of Military Justice (UCMJ) is applicable to U.S. troops worldwide and, since the 2007 Defense Authorization Act (P.L. 109–364), can also be used to prosecute certain civilians "in time of declared war or contingency operation . . . serving with or accompanying an armed force in the field." The fact that a person is eligible for trial by court-martial under the UCMJ does not make him or her ineligible for trial in the ordinary U.S. courts.

In order to prevent arbitrariness—with, for example, civilian contractors charged with similar or the same crimes as military personnel, but tried in different jurisdictions—and to avoid any perception of inappropriate military justice leniency or lack of impartiality, Amnesty International believes that all personnel, civilian or military, of low rank or high, should be tried for human rights abuses in civilian courts. Any trials must conform fully to international standards for fair trial, and the death penalty—which could be available under the UCMJ, the War Crimes Act and the Torture Statute in cases of torture or ill-treatment resulting in death—must not be imposed.

Mr. SCOTT. Thank you.

Professor Horton?

TESTIMONY OF SCOTT HORTON, ADJUNCT PROFESSOR OF LAW, COLUMBIA UNIVERSITY SCHOOL OF LAW, NEW YORK, NY

Mr. HORTON. Thank you, Chairman Scott, Ranking Member Forbes and Members of the Subcommittee. I want to thank you for the opportunity to speak with you today about this very important subject.

I would like to highlight three points from the written remarks I have submitted, and I would also like to come back at the end and address the question of constitutionality which was raised by Ranking Member Forbes in his comments.

First, we are facing a major accountability problem. The force profile has changed dramatically. The current mix draws far more heavily on civilians than at any time in our history, and prior to the time the current surge began, there were about 100,000 contractors in Iraq, for instance, against 125,000 Americans in uniform. So this is approaching parity.

If we compare this with the situation in World War II, in the Korean War, for instance, in both of those conflicts, the percentage of contract personnel involved would have run between 3 percent and 5 percent.

But even though this configuration has changed radically, the way we handle accountability issues has not. That is we continue to have a focus on those in uniform. So, as a result today, we are performing at historical levels with respect to military accountability, but with respect to the civilians, the system clearly has broken down.

Now the current legislation has some holes in it. In particular, we have legislation that is tied to the Department of Defense and legislation which is tied to U.S. installations. In my own review of individual cases reported in the media and from other sources, there are a significant number of cases that are going to fall in the gap between these two categories.

In fact, I would say generally the group of cases I am most troubled by right now involves homicide and assault and involves a particular group of security contractors contracted by the Depart-

ment of the State where their contract states that their mission is diplomatic protection.

So I can see if a prosecution were brought under MEJA today, we would have an immediate squabble—and lawyers would get to earn a lot of fees—over whether they are covered by this statute, and I think that would be unfortunate, a waste of prosecutorial and judicial resources.

H.R. 369 is going to bridge this problem by expanding the scope of covered persons under the MEJA to cover any U.S. Government contractor or subcontractor with the focus of their deployment in the region where the contingency operation is going on. That strikes me as exactly the correct approach.

Second, we need to consider that the exercise of criminal jurisdiction may, in fact, be essentially protective in nature. A significant number of the cases that I have looked at involve American contractors as victims, not simply as actors.

There may not be a basis to prosecute and investigate those cases, as things stand right now, and that particularly arises as a result of the order, Order 17 that was issued by Jerry Bremer on his last day in Iraq granting complete immunity to American contractors and contract employees under the Iraqi criminal justice system.

So they are out under that system, and that means that there has to be a pro tanto substitute. There has to be a provision of criminal investigatory authority and criminal oversight by the United States.

We need to consider here as well if granting this immunity from the Iraqi system is an objective that the United States has going forward.

General Petraeus has stated in the last few days that he sees a Korea-style solution here, a situation where there will be a substantial force presence in Iraq for the next 50 years. If that is true, there will be a substantial civilian presence there as well, and if we want to negotiate the status of forces agreement with the Koreans that continues this immunity arrangement, we have to provide the ability to handle criminal investigations and prosecutions.

Third, I see a false conflict emerging here between the Uniform Code of Military Justice—its use has been advocated by Senator Graham—and the MEJA, and I do support Senator Graham's initiative. It strikes me as an appropriate underscoring of the authority of military command. I see these things as complementary and mutually reinforcing and supporting, not as in conflict.

Finally, Ranking Member Forbes raised questions concerning the constitutionality of MEJA, and I think it is important to note that law of war concepts and law of war enforcement have never been subject to the sort of territoriality rules that apply generally to criminal law. In fact, if we look at the law of war norms from the time of the drafting of the American Constitution, Vattel and Grotius, the two major writers who were relied upon and known to the framers, both of them argued that the sovereign has the right and the responsibility to enforce the laws of war with respect to all those who are deployed by the sovereign in connection with the war effort. That includes soldiers, mercenaries, camp followers and contractors.

Now the Constitution gave Congress the authority to define the law of nations in this regard, and the proposal that is made here with respect to MEJA is defining the law of nations in the way that is completely consistent with the historical understanding of the criminal law jurisdiction to enforce the laws of war.

We also have to understand this against the backdrop of the immunity that is granted here from Iraqi criminal prosecution because if the result is that there is no available criminal jurisdiction, neither American nor Iraqi, then we have done something that is a serious violation of the law. Then there is a responsibility with Congress, not just a right, to legislate this.

Thank you.

[The prepared statement of Mr. Horton follows:]

Prepared Statement of Scott Horton

Committee on the Judiciary
Subcommittee on Crime, Terrorism and Homeland Security

"War Profiteering and Other Contractors Crimes Committed Overseas"
Hearing on June 19, 2007

Prepared Remarks of Scott Horton
in Support of H.R. 369

Chairman Scott, Ranking Member Forbes, and Members of the Subcommittee, thank you for inviting me to speak with you today about this important subject. My name is Scott Horton. I am an adjunct professor at Columbia Law School where I teach the law of armed conflict and commercial law courses. I also am the Chair of the Committee on International Law at the Association of the Bar of the City of New York ("Association"). Since February of this year, I have managed a project on the Accountability of Private Military Contractors at Human Rights First. Later this year Human Rights First will publish a detailed report on this subject.

I appear here this morning in support of H.R. 369, the Transparency and Accountability in Security Contracting Act, co-sponsored by Representatives Price, Schakowsky and 39 other Members, as well as H.R. 2740, which pulls out the provisions of H.R. 369 relevant to the Judiciary Committee. The focus of this bill is highly technical – expansion of the scope of the Military Extraterritorial Jurisdiction Act ("MEJA"). But it addresses a fundamental and pressing problem: lack of accountability of U.S. private military contractors to the "law of war" and the principles of the Geneva Conventions. By making MEJA applicable to all persons employed under a contract (or subcontract) written by any agency of the U.S. Government which is being performed outside of the United States and in connection with a contingency operation, H.R. 369 would address an serious gap in the current system. Its passage would help to ensure that private security contractors understand and adhere to the laws of war which govern U.S. military actions around the world.

The United States has had an extremely honorable record with respect to the law of war, not just with respect to American initiative and authorship, but also in providing training, oversight and accountability under the law of war for those it deploys in combat abroad. The "war on terror" has, however, been undertaken in a different way from former conflicts, and that has raised questions about whether training, oversight and accountability for law of war rules have been changed to reflect this different approach..

In the Second World War and Korean War, contractors amounted to somewhere between three and five per cent of the total force deployed. In the Vietnam conflict that number cer-

tainly exceeded five per cent, but just barely. The first Gulf War saw the ratio change fairly dramatically, to roughly ten per cent. But in the current conflict, the number appears to be climbing steadily closer to parity. Before the commencement of the surge, for instance, the total community of contractors in Iraq was around 100,000 and the number of uniformed service personnel was around 125,000.

This represents an extremely radical transformation in the force configuration. While the majority of these contractors are providing non-combat services like the provision of food and laundry services, a significant number of others are armed and involved directly in security operations. I cite these numbers not to criticize the reliance on contractors, but merely to highlight the fact that a very large part of the total force is not in uniform. Our training, oversight and accountability system has historically been geared to those in uniform. Yet despite the transformative expansion in the reliance on military contractors, that's still the case today.

There is good reason to ask whether the accountability system works with respect to government contractors and subcontractors. Since the invasion of Iraq, there have been more than four dozen courts-martial commenced with respect to law of war issues. This number is generally consistent with American historical performance in war time and suggests that the court-martial system, providing accountability for uniformed military personnel in war time, is functioning normally. But if we contrast this with enforcement action involving contract personnel, we get a different result. To date only one enforcement action has been brought to a conclusion – the Passaro prosecution in North Carolina. It is noteworthy that the Passaro case was brought under the Patriot Act, not under MEJA, and that case helps explain why the amendment is necessary. (The Patriot Act provision used in that case applies only to "crimes on U.S. facilities," so it would not work for most of the cases we have examined, which are usually not on U.S. installations; conversely, the current MEJA language, limiting jurisdiction to contractors "in support of Department of Defense missions" might not work for Passaro, who was a CIA contractor.) The available data so far – which are still incomplete – suggest that contractors are certainly not less prone to infractions than uniformed soldiers are. If anything, the absence of military training and discipline would suggest that security contractors are more likely to commit violations of the laws of war when they become involved in difficult security operations.

Just a few days ago, I participated in a workshop sponsored by the Law and Public Affairs Program at Princeton University concerning the accountability of private military contractors. There were roughly three dozen bipartisan participants drawn from corporate executives from private military contractors firms, Government policy makers from the Department of Defense, intelligence community and other agencies, academics, Congressional staffers and think-tank analysts. The sponsors asked us at one point to define the current problem. There was an almost immediate consensus on a great number of issues: that the roles of military contractors had not been well-defined and that there was a lack of clarity about limitations on the use of contractors in military operations, for instance. After that,

there was general agreement that the law for prosecuting misconduct among contractors required careful review in light of the very troubling lack of follow-up in prosecutions that had been investigated in the field and referred for prosecution. Why exactly were criminal investigations not occurring? Why were there no prosecutions, even in cases in which the military had conducted criminal investigations?

H.R. 369 addresses what the conference participants identified as a major priority, namely insuring that a clear statutory basis exists for criminal justice action back in the United States. The original text of MEJA is in this context limited to persons "accompanying the Armed Forces." It included contractors under the term "employed by the Armed Forces outside of the United States" provided they are contractors of the Department of Defense or "any other Federal agency… to the extent such employment relates to supporting the mission of the Department of Defense overseas." H.R. 369 would expand this to include U.S. Government contractors or subcontractors who are outside of the United States in a region in which the United States is conducting a contingency operation, i.e, an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force.

This change would update the law to better reflect the current situation in Iraq and Afghanistan in which a large number of contractors are present, with contracts written by a variety of different government agencies, including the Departments of Interior and State. It is unclear whether the majority of contractors operating in these places are doing so puruant to a contract with the Department of Defense, or even whether their contract "supports the mission of the Department of Defense overseas." In some cases personnel are working with the Department of Defense, for instance, in connection with contracts written by the Department of the Interior. And indeed, a large part of the security contractors – the specific subgroup that presents the most cause for concern – have contracts and subcontracts written by the Department of State under the rubric of "diplomatic security." Clearly, the specific contracting agency should be irrelevant for the purpose of ensuring that all contractors adhere to the laws of war. What counts is that the United States Government funds them, directly or indirectly, and brought them into the theater of combat. The United States assertion of criminal law jurisdiction over such personnel should not be viewed as something hostile. To the contrary, it is an essentially protective position. H.R. 369 makes this essential change.

The fact pattern of violations by contractors in the cases I have studied so far is consistent. An incident occurs, frequently involving homicide or assault. The contractor generally conducts a preliminary investigation, prepares a report and, if the initial concerns are borne out, employment of the personnel in question is terminated and they are put on a plane to America within a matter of a couple of days. However, in some cases, contractors have failed to conduct an investigation but have transferred the personnel involved out of the theater of operations, sometimes resulting in a redeployment from Iraq to Afghanistan, Kuwait or Jordan, for instance. But that's been the end of the story. If we were talking about a uniformed

service person, the Criminal Investigative Division would come in, a criminal investigation would ensue, and if sufficient evidence were present, there would be a court-martial or a nonjudicial punishment for a lesser offense. With contractors, however, no hand off to investigators and prosecutors appears to occur. This is a severe problem.

I am attaching as an appendix to this report a number of incidents reported in the press which reflect criminal activity involving contractors. We are in the process of independently investigating some of these incidents. I draw your attention to these reports not in order to comment on the guilt or innocence of persons named in them. Rather I note that each presents a case that should, in the ordinary course, have been the subject of a criminal investigation and potential law enforcement action. Yet no action appears to have occurred in any of these cases.

If these alleged offenses were to occur inside the United States, of course, it would be up to the FBI and federal prosecutors or state and local law enforcement officials depending on the circumstances of the offense to investigate and prosecute them. But in Iraq, contractors are beyond the reach of the local Iraqi law enforcement agencies. Without U.S. government oversight, investigation and prosecutorial authority, contractors have criminal law immunity.

This immunity was granted under Order No. 17 issued by Lewis Paul Bremer III as head of the Coalition Provisional Authority for Iraq. It was issued on June 27, 2004, the day Mr. Bremer left Iraq when authority was transferred from the CPA to the Government of Iraq,. The Government of Iraq was required to accept and maintain Order No. 17 as a condition of the transfer of authority to it. However, since the interim government transferred authority to the new government, the Minister of Justice and other officials have consistently challenged the legality and validity of Order No. 17.

The theory underlying Order No. 17 parallels various Status of Forces Agreements ("SoFA") negotiated by the United States around the world – such as that in effect with Germany, Japan and Korea. But there is one significant difference. Most SoFAs do not provide immunity; rather they grant a *first right to prosecute* American personnel to American authorities. In the event of a failure to exercise this right, the host nation would have the power to bring charges if it chooses to do so. For a number of reasons, including the difficulty of dealing in a foreign language with persons operating in a foreign culture and environment, host nations would generally prefer not to take the lead on such prosecutions. Rather, they would prefer that the United States do so. The United States likewise would generally prefer to exercise this criminal law authority for a simple reason: in a conflict or military environment, the exercise of law enforcement enhances or bolsters the position of the command authority. The introduction of a foreign law enforcement authority confuses or has the potential of undermining that authority. However, when the United States has failed to act, as it has in recent incidents in Okinawa and Korea, this has had a chilling effect on relations with the host country. The Okinawa and Korea incidents – as well as a recent homicide case at Ganci Air Force Base in the Kyrgyz Republic – provide good examples of how U.S. failure to investigate or prosecute can severely damage relations with the host nation. The far better U.S.

track record in Germany provides a good example of how criminal investigation and prosecution can help maintain excellent host nation relations.

However, the notion of immunity introduced in Order No. 17 is far more sweeping than the prior SoFA practice. It contains a blanket bar to criminal justice action in Iraq. This is particularly strange because there is no alternative arrangement made for a prosecution by U.S. authorities on Iraqi soil (such as exists, for instance, in the U.S.-Korea SoFA). It creates a situation in which removal to the United States and prosecution in the United States is the sole alternative. Yet no such prosecution has yet occurred with respect to contractor crimes in Iraq. This is certain to be cited by the Iraqi authorities as an argument in support of stripping contractor immunity in their country.

General Petraeus and others in the chain of command have noted that the future U.S. role with respect to Iraq is likely to proceed on the "Korean model," which is to say a scenario in which a substantial military contingent is deployed in Iraq for a very lengthy period. Considering the current deployment model, then, we should anticipate a long-term presence of substantial numbers of U.S. government contractors and subcontractors in Iraq for the next generation. If the United States wishes to retain the power to address criminal justice issues for these contractors and avoid having them dealt with by the Iraqi criminal justice authority, it must provide a clear basis for criminal justice accountability in the United States with respect to wrongdoing in the Iraqi theater of operations. H.R. 369 will help achieve that goal.

It's not enough simply to provide a clear jurisdictional footing. Resources also need to be allocated for enforcement. H.R. 369 starts the process by providing for an FBI investigative unit and providing for an Inspector General's report on the quantum of cases.

As this Committee considers legislative solutions to the pressing problem of contractor accountability, I want to suggest one final point. Some have argued that Congress should either expand and develop MEJA as an accountability mechanism to be administered by the Department of Justice, or leave the issue in the hands of the Department of Defense drawing on long-standing but recently clarified provisions of the Uniform Code of Military Justice ("UCMJ") that would allow military justice to apply to military contractors overseas during contingency operations. I reject this perspective. As Senator Lindsey Graham has argued, I believe it is essential that command authority in a war zone and in times of war retain the authority to wield military justice as a disciplinary tool with respect to contractors. I believe that this tool would and should be sparingly used, reserved for cases where there has been a direct conflict with command authority involving security contractors. But in most cases, the preference of command authority has and will continue to be to immediately evacuate the offender to U.S. territory, and in this circumstance that would mean to the authority of the Department of Justice.

Both mechanisms are important. As I see it, the approach taken by H.R. 369, and the recently enacted amendment of the UCMJ sponsored by Senator Graham are mutually supportive and not in conflict.

When we talk about the "Geneva Conventions" and the "law of war," we frequently loose sight of the fact that this entire body of international law is a distinctively American contribution. The core of this law was laid down by Abraham Lincoln on April 23, 1863, when he promulgated the Lieber Code, and over the next seventy years international humanitarian law developed on the basis of American advocacy – insuring, as Theodore Roosevelt's Secretary of State, Elihu Root, stated, that the vision of America's greatest president would emerge as the law not only of the United States, but of the entire world community. The Hague Conventions on Land Warfare and several successive versions of the Geneva Conventions emerged during this process, and over time international law did in fact come progressively closer and closer to Lincoln's vision.

These efforts were primarily the work of the Republican Party, which pursued it as a memorial to their greatest president. It was and is a fitting memorial.

President Lincoln's law of war advisor, Francis Lieber, wrote in 1862 that by zealously enforcing the rules of war, we maintain the good discipline and morale of America's armed forces and uphold our nation's reputation. Once we stop enforcing the rules, the system will break down and it will be very difficult to restore it. He wrote, "And such a state of things results speedily, too; for all growth, progress, and rearing, moral or material, are slow; all destruction, relapse, and degeneracy fearfully rapid. It requires the power of the Almighty and a whole century to grow an oak tree; but only a pair of arms, an ax, and an hour or two to cut it down." Lincoln's doctrine of war has grown into a mighty oak which surely has not fallen, but it is badly in need of care and attention from this Congress. H.R. 369 provides some essential maintenance.

Thank you for your attention.

SCOTT HORTON

Washington, D.C.
June 19, 2007

Short Biography

Scott Horton is an adjunct professor at Columbia Law School where he teaches law of armed conflict and commercial law courses. He is also chair of the Committee on International Law at the Association of the Bar of the City of New York ("Association"). Since February of this year he has managed the Project on Accountability of Private Military Contractors at Human Rights First. Human Rights First will publish a detailed report on this subject later this year. This testimony is based on information gathered in connection with that report.

Prof. Horton is the son of an Air Force colonel who spent half of his life growing up on U.S. military installations overseas. He has worked for over twenty years on international humanitarian law matters, and previously served as a monitor in conflicts in the Caucasus, Central Asia and West Africa. He has also been active in human rights matters, serving as counsel to Andrei Sakharov, Elena Bonner and other leaders of the Russian human rights and democracy movements. He is a founder and trustee of the American University in Central Asia, a former officer and director of the American Branch of the International Law Association, a member of the Council on Foreign Relations, chair of the advisory board of the EurasiaGroup and a member of the advisory board of the National Institute of Military Justice. In 2003, he organized and led an Association study and report on interrogation techniques in use in the war on terror. In 2004, he managed an Association study and report on the practice of extraordinary renditions. In 2006, he was admitted to the Iraqi Bar Association as a corresponding member and he managed a case before the Central Criminal Court of Iraq in Baghdad that spring. He is the author of more than a hundred publications dealing with issues of international public and private law, including law of war questions, and he is currently working on a book on legal policy issues relating to private military contractors.

APPENDIX

INCIDENTS INVOLVING MILITARY CONTRACTORS WHERE INVESTIGATION AND POTENTIALLY LAW ENFORCEMENT ACTION IS INDICATED

Triple Canopy suit brought in Fairfax County

"In a suit brought in Fairfax County, former employees of Triple Canopy - Shane B. Schmidt, a former Marine Corps sniper, and Charles L. Sheppard, III, a former Army Ranger - claim that they witnessed their supervisor deliberately shoot at Iraqi vehicles and civilians this summer, and that the company fired them for reporting the incidents.

"The allegations say Triple Canopy, one of the largest private military contractors to work with the United States in Iraq, retaliated against the men for reporting that their supervisor had committed violent felonies, and perhaps murder, on the job."[1]

"In the lawsuit the men say that their shift leader, who was scheduled to leave Iraq the next day, was determined to kill before he left Baghdad. The first incident, their shift leader abruptly announced that he was 'going to kill someone today,' stepped from his vehicle and fired several shots from his M4 assault rifle into the windshield of a stopped white truck. Later in the day the shift leader said, 'I've never shot anyone with my pistol before,' and then opened the vehicle door and fired seven or eight shots into the windshield of a taxi. Neither the truck nor the taxi posed any threat." [2]

"Both men said that the shift leader had told them that if they reported the shootings they would be fired, and that they feared that the shift leader, whom they regarded as unstable, was dangerous to them. However, the day after the shift leader left Iraq, the two men reported the shootings to Triple Canopy's senior supervisors in the country. Immediately after making the report, both men were pulled from duty and suspended. Within a week the plaintiffs were terminated as a result of having reported the Shift Leader's unlawful conduct."[3]

"Both men had been paid $500 a day by Triple Canopy for their work in Iraq. The suit claims that "Triple Canopy's management blacklisted the men in the private military contracting industry, rendering them unemployable in the lucrative trade of providing private security in Iraq."[4]

"Both Schmidt and Sheppard say that they have not been properly interviewed about the alleged incidents, and neither Triple Canopy nor the governments of the United States or Iraq have investigated their claims."[5]

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[1] Chivers, C.J . "Contractor's Boss in Iraq Shot at Civilians, Workers' Suit Says." *New York Times.* Nov. 17, 2006.
[2] Fainaru, Steve. "Hired Guns are Wild Cards in Iraq War." *Chicago Tribune.* April 16, 2007
[3] Fainaru, Steve. "Four Hired Guns in an Armored Truck, Bullets Flying, and a Pickup and a Taxi Brought to a Halt. Who did the Shooting and Why?: A Chaotic Day on Baghdad's Airport Road." *Washington Post.* April 15, 2007.
[4] Chivers. *New York Times.* November 17, 2006.
[5] *Id.*

Shooting of a Young Iraqi

"Yas Ali Mohammed Yassiri was a 19-year-old Iraqi when he boarded a taxi on his street in the Masbah neighborhood in Baghdad. Around the same time, Robert J. Callahan, wrapping up his tour as spokesman for the U.S. Embassy in Iraq, was returning to his offices in the U.S.-controlled Green Zone when his convoy turned onto a broad thoroughfare running through Baghdad's Masbah neighborhood. The mercenaries guarding the US embassy spokesman in Baghdad drove around the corner, so Ali's taxi slowed down - but the convoy opened fire anyway, to clear their path. The taxi driver was struck in the shoulder, and Ali was hit in the throat and died immediately."[6]

"The taxi driver, Mohammed Nouri Hattab, said it was the third time since the U.S. invasion in 2003 that he had been fired on by Americans. On the first two occasions, U.S. troops who had mistakenly fired at him later apologized."

"State Department officials did not respond to requests for comment on the incident. But a U.S. official with knowledge of the case said that embassy officials had reviewed the shooting and determined that employees of the security company involved, North Carolina-based Blackwater USA, had not followed proper procedures."[7]

"Although the US embassy now admits the convoy 'opened fire prematurely,' the mercenaries were merely sent home; they are free, happy men."[8]

Blackwater Gun Battle in Najaf

"In April 2004, mercenaries working for Blackwater were guarding US occupation headquarters in Najaf when a protest by Shia Iraqi civilians began to stir outside.

"According to the Washington Post, the Blackwater contractors opened fire on the protesters, unleashing so many rounds so rapidly they had to pause every 15 minutes to allow their gun barrels to cool down."[9]

"Blackwater mercenaries proceeded to engaged in a day-long firefight with the Mahdi Army without any authority from U.S. military forces.

The Post story said Blackwater "sent in its own helicopter amid an intense firefight to ferry in more ammunition and ferry out a wounded marine during this battle." The day after the attack, the spent shell casings in the Blackwater bunkers were "calf-deep."

"A video of this attack made it on to the Web, where a mercenary can be seen describing the Iraqis they are gunning down as 'f*ckin' n*s.'"[10]

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[6] Hari, Johann. "Iraq's Mercenaries—With a Licence to Kill." *The Independent.* June 4, 207.
[7] Miller, Chirstian. "Iraq: Private Security Guards Operate with Little Supervision." *The Lost Angeles Times.* December 4, 2005.
[8] Hari. *The Independent.* June 4, 2007.
[9] Priest, Dana. "Militia Attack Repelled by Private Security Firm." *Washington Post.* April 6, 2004.
[10]Id. http://www.youtube.com/watch?v=C_JRVFMsi2Q&mode=related&search=

Disappearance of American Contractor

"On Oct. 9, 2003, Kirk von Ackermann, 37, was driving alone in northern Iraq when he pulled off the road with a flat tire and phoned the Kirkuk office of his employer—Ultra Services, based in Winters, Calif.—for help. A colleague arrived later to find the car but not Von Ackermann."[11]

"Two months later, north of Baghdad, gunmen in an SUV shot and killed Ryan Manelick, 31, another Ultra Services employee, and an Iraqi traveling with him by car.

"Manelick's father claims that his son had e-mailed him saying he suspected that colleagues at Ultra Services—whose website says it has done $14 million worth of business with the Pentagon—were involved in fraudulent activities with U.S. Army contracting officers. The Army's Criminal Investigation Command has confirmed that Manelick met with its investigators in Iraq but won't say what was discussed."[12]

"Suspecting that Von Ackermann and Manelick weren't the victims of random violence, the investigative command turned the cases over to its Major Procurement Fraud Unit. Spokesman Chris Grey says the probe has been slowed because of the "complexities of this case" and the difficulties of collecting evidence in a war zone."

Contractors Create "Trophy Video" of Civilian Shooting

"In late 2005, a video appeared on a website run by employees of London-based military contractor Aegis Defense Services that depicted security contractors shooting civilian vehicles on the Iraqi highway connecting Baghdad International Airport with the city of Baghdad itself.

"The video, seemingly taken from the rear of a sport-utility vehicle, showed following Iraqi cars being shot with small arms fire. One bullet-pocked car crashes into a taxi, while a different car slows to a stop under withering fire. Different versions of the video have included audio of the laughter and shouting of several passengers in the sport-utility vehicle, or alternately the Elvis Presley song "Mystery Train."[13]

"At the time, Aegis Defense held the largest known security contract from the United States, worth $293 million. Aegis Founder and CEO Tim Spicer, a former British Army officer, is known as the former leader of several now-defunct private military companies."[14]

"Concerns about contractor accountability followed media coverage of the so-called "trophy video." Several investigations examined the incident; however, the Army's Criminal Investigative Division

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[11] Hari. *The Independent.* June 4, 207.
[12] Waller, Douglas. "Foul Play in Iraq?" *Time Magazine.* February 13, 2005.
[13] Finer, Jonathan. "Contractors Cleared in Videotaped Attacks: Army Fails to Find 'Probable Cause' In Machine-Gunning of Cars in Iraq." *Washington Post.* June 11, 2006.
[14] Aegis Website. http://www.aegisworld.com/management.html

decided in June 2006 that it could not charge any contractors with a crime due to lack of probable cause."[15]

No further criminal action has been taken against any of the involved contractors.

[15] Finer. *Washington Post.* June 11, 2006.

Mr. SCOTT. Thank you very much.

I thank all the witnesses for testifying.

And we will now have questions for the panel limited to 5 minutes, and I will recognize myself first for 5 minutes.

I wanted to follow up, Professor Horton. Well, I guess I will start with Mr. Sabin.

He has indicated a lot of kind of areas where there may be gaps in coverage. When we passed MEJA in 2000, we thought we had covered the problem of people overseas committing crimes and find themselves, because they are outside of the continental United States, not under the criminal code. They could do it with impunity, and we thought we had covered everybody. There have been a number of kind of categories of people—Iraqis committing crimes, either fraud or assault, contractors of other agencies, other than the Department of Defense, subcontractors, spouses, I guess, crimes committed off base.

Has the Department of Justice looked into possible gaps that need to be closed?

Mr. SABIN. Yes.

Mr. SCOTT. And do you have a list of recommendations for us?

Mr. SABIN. We have two different concepts being discussed here. One is the war profiteering under H.R. 400 and the problems that that would address, and we can talk about our discussion in that regard.

The MEJA issue, the statute has been amended. The Patriot Act provision that deals with the subject matter of the special maritime and territorial jurisdiction, that was addressed in the amendment under 2004 and 2005.

As a result of that, it added certain language which would include the language that the professor referred to, a contractor in support of DoD mission abroad. So the concern that he articulated is a fair one, where you have folks that would be in support of that mission which would raise a factual issue that prosecutors would need to address in order to have appropriate ability to bring a case under MEJA.

And remember, MEJA relates to, as articulated, common-law crime—murder, assault and the like—and we have been able to exercise MEJA jurisdiction in relationship to the Iraq theater as well as in other——

Mr. SCOTT. Well, some people could be over there doing things that might not be technically Department of Defense. It might be Department of State in the theater.

Mr. SABIN. Correct. And if it is outside the Patriot Act extension relating to the special and maritime territorial jurisdiction of the United States, MEJA looks to the status of the individual as opposed to Title 18 Section 7 Subsection 9 which is a blend between who the person is, the offender or the person who is the victim of the crime, blended with the location of the particular incident occurring.

So, under MEJA, you look to who is involved here, what is the status of that individual, is it a dependent, is it someone who is accompanying someone abroad, is it an actual present service member of the military or a former service member of the military? So we look through where we are, who it is, and then figure out is

there appropriate jurisdiction under either the Patriot Act or traditional extraterritorial offenses or MEJA.

Mr. SCOTT. Well, let's get to the bottom line. Does the Department of Justice see any gaps in coverage?

Mr. SABIN. Originally, we are here to talk about the War Profiteering Act, so I do not have cleared comments to recommend to you with respect to either H.R. 369 or 2740. However, I do have comments that I could provide to you regarding certain constitutional issues that arise from as presently drafted.

Mr. SCOTT. Okay. Does anybody else have a list of categories of people that we need to be covering just in terms of MEJA jurisdiction? There are——

Professor Horton, you have indicated a number of different categories that did not seem to be covered. Do you have a list?

Mr. HORTON. Yes, sir. I think the specific example I cited was diplomatic protection under Department of State, and I come to that just on the reverse analysis, looking at specific incidents and asking whether a prosecutor looking at all the tools that are available to him now is going to be able to deal with it.

Now I agree with Mr. Sabin. I think, obviously, a prosecutor is going to be able to assert jurisdiction of some sort, but, because of the way this language has been drafted, because of it being tied to a mission of the DoD, we are going to look at a preliminary skirmish in a lot of these cases about whether the contract really is tied to the DoD, and when it is written by the Department of the Interior, the Department of State, USAID, and when it is a subcontractor, we are going to see that over and over again. That is a waste.

Mr. SCOTT. Ms. Razook, do you have any comments on just jurisdiction, who ought to be covered by the criminal code?

Ms. RAZOOK. Yes. And I just want to clarify what Mr. Sabin said, that the USA Patriot Act covers people who committed a crime on a U.S. facility abroad, so the category that I mentioned with contractors doing security for reconstruction efforts, that is not going to be necessarily on a U.S. facility. So those types of contractors potentially would fall in the loopholes left under MEJA and the USA Patriot Act.

Mr. SCOTT. Thank you.

Mr. Forbes?

Mr. FORBES. Thank you, Mr. Chairman.

Once again, I thank all of you for taking your time to be here today. I wish we had time to sit down with each of you for a long period of time, but we are limited to 5 minutes, just like you are. So I am going to try to be quick on my questions.

And one of the things that I get from listening to all of you is that we are going to have private contractors in every contingency operation, every conflict we have from now on, and I think even Professor Horton acknowledged those percentages are increasing, and that is just the nature of the beast. We cannot deliver troops. We cannot do a lot of things without the contractors there.

Mr. Bowen, I want to first thank you—Mr. Gimble—both of you for the jobs you do. We have had you in a number of hearings, and both Republicans and Democrats always laud your work, and we appreciate that.

I may have misunderstood you, Mr. Bowen, but it is my thought that your testimony is, despite this growing number of contractors that we have involved, when really you look at the amount of war profiteering and fraud that is there, it is a small percentage of the overall operations. Is that accurate or——

Mr. BOWEN. That is right. You did not misunderstand it. It is a small component of the overall investment in Iraq reconstruction, which amounts to about $38 billion, and to date, the convictions and imprisonments we have obtained, results of egregious fraud we have uncovered, primarily focused on misuse and fraudulent misuse of Development Fund for Iraq money. That is Iraqi money. However, we have, as I said, over 70 cases ongoing, 30 at the Department of Justice, most of those involving U.S. money.

Mr. FORBES. And it does not matter whether it is a small percentage or not. We are still aggressively prosecuting the ones that we discover and find. Is that fair and accurate?

Mr. BOWEN. That is right.

Mr. FORBES. Mr. Sabin, I would just ask you a question. What is the process for sealing a case under the False Claims Act?

Mr. SABIN. You would look to Title 31 United States Code Section 3730. An extension for sealing under the False Claims Act is issued by a judge. It is presented upon a factual showing by the government for keeping the case to be sealed.

The government must demonstrate to that court that good cause is shown for its request to extend the time to have the matter sealed, and that for a variety of reasons, in order to continue to conduct these complex investigations, to protect witnesses, informants, and it is consistent with congressional intent for the government to determine whether it should intervene in a matter which otherwise may have been brought or not brought by the United States that the relater, the term of art, the whistleblower has filed in a court of law.

Mr. FORBES. So the judge is the one that would ultimately make that——

Mr. SABIN. Absolutely. Present it to a judge who makes the determination upon a specific factual showing by the government for good cause.

Mr. FORBES. Let me ask you this. And I do not mean to cut you off. It is just I am short on my time here.

Mr. SABIN. Yes, sir.

Mr. FORBES. The Department has been criticized today for disingenuously seeking to seal these cases in order to threaten whistleblowers with dismissal of their cases. Any response to that?

Mr. SABIN. Patently false. I absolutely disagree with that assertion. I do not believe it is a well-founded assertion. The government professionally and thoroughly reviews the allegations made and, if appropriate, will intervene; if not, will decline and the matter can go forward if the relater wants to and counsel wants to.

Mr. FORBES. Mr. Grayson, thank you for being here, and I know that this hearing, as you know, is at least a discussion of H.R. 400 and H.R. 369. Do you support both of these pieces of legislation?

Mr. GRAYSON. Well, I am here primarily to address the lack of enforcement that has occurred under existing law under the False Claims Act, and I point out——

Mr. FORBES. So you are not here to speak on those two pieces of legislation?

Mr. GRAYSON. Indirectly, I am, but directly not. I would point out that Mr. Sabin has no responsibilities with regard to seal False Claims Act at all, and I do.

Mr. FORBES. I will leave those to somebody else, but if you are not here on those two pieces of legislation, let me move to Ms. Razook.

And I hope I am pronouncing that correctly. Thank you for being here. And one of the things I noticed in your testimony is that you believe that all personnel—civilian and military—should be tracking human rights violations in civilian courts, and then you mentioned the fact that these 17 cases in the Eastern District of Virginia are languishing, I think was your term that you had. Is that a civilian court?

Ms. RAZOOK. Yes.

Mr. FORBES. Have you practiced in that court before?

Ms. RAZOOK. In the Eastern District of Virginia? No.

Mr. FORBES. I have, and one of the things in that court that they are known for is the judges controlling the dockets and not the attorneys, be they prosecutors or defense attorneys. So here we have a civilian court that is handling these matters, and the judges apparently are moving the dockets in the way that they think are preferential, but you are really upset with those judges and how they are handling their dockets as well. Is that not correct?

Ms. RAZOOK. Well, there are two parts of it. First is that——

Mr. FORBES. Just be quick because my time is out.

Ms. RAZOOK. I am sorry.

Mr. FORBES. That is okay. You go ahead. You go ahead.

Ms. RAZOOK. The first is that there has not been prosecution of what even the Army's own investigation has said has been evidence of serious human rights violations, and in 3 years, we have not seen anything, but not just that we have not seen a prosecution or any evidence of an investigation. But the second part of the problem is the transparency issue which we cannot even figure out why that is not happening.

Mr. FORBES. But my question to you was you have 17 cases in that court that you say are languishing. Is that accurate? That is a civilian court. Is there anything that takes the movement of that docket and changes it from the way that those judges would normally handle their dockets in their court?

Ms. RAZOOK. The reason why Amnesty International supports civilian trials for prosecution of human rights violations is because, first of all, we would want prevent potential arbitrariness between military personnel being tried under one system, the UCMJ, and civil contractors being tried under another system. And the other—there are actually a couple of other reasons—is the perception of inappropriate military justice leniency for——

Mr. FORBES. Mr. Razook, I am happy with that. I mean, you have submitted all that, but my question was your discussion about civilian courts and your frustration with the Eastern District Court of Virginia and how those judges are handling their dockets, and I was wondering if you could explain what those judges are doing wrong because they control their dockets.

Ms. RAZOOK. Well, that is the problem, is that we do not know what they are doing.

Mr. FORBES. But your complaint there is not with the Department of Justice. It is with the judges in handling their dockets.

Ms. RAZOOK. Well, on the one hand, we have seen other districts, the District of Arizona and the District of North Carolina, prosecute. However, the Department of Justice is the body charged with this responsibility in general, and so we have——

Mr. FORBES. But they do not control that docket in the Eastern District of Virginia, do they?

Ms. RAZOOK. Well, they are charged with responsibility, and——

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

Mr. SCOTT. The gentleman from Georgia?

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. Bowen, I heard you say that there is about $38 billion worth of fraud in Iraq that——

Mr. BOWEN No, sir. About $38 billion has been invested in Iraq in taxpayer money.

Mr. JOHNSON. Oh, okay. In terms of reconstruction?

Mr. BOWEN. That is right. Relief and reconstruction efforts, including security money.

Mr. JOHNSON. All right. And so you are saying that it is about $5 billion in alleged corruption that has been uncovered?

Mr. BOWEN. On the Iraqi side, that is what the commissioner on Public Integrity told me.

Mr. JOHNSON. And on the Iraqi side, you have Iraqi ministers who are immune from prosecution, if you will, for corruption?

Mr. BOWEN. That is right.

Mr. JOHNSON. And they have the ability to immunize their subordinates for corruption?

Mr. BOWEN. That is right.

Mr. JOHNSON. And that corruption involves U.S. taxpayer dollars?

Mr. BOWEN. Iraqi dollars.

Mr. JOHNSON. Iraqi dollars?

Mr. BOWEN. Yes, sir.

Mr. JOHNSON. It does not include United States taxpayer money?

Mr. BOWEN. No, sir.

Mr. JOHNSON. I see. So does current law allow for the United States to prosecute Iraqis for fraudulent obtaining of Iraqi money which came from American taxpayers' money?

Mr. BOWEN. To prosecute Iraqis for the fraudulent——

Mr. JOHNSON. Iraqis for stolen money from Iraq which basically came to Iraq from the American taxpayer.

Mr. BOWEN. That is a jurisdictional question that we work with the Department of Justice on. I am going to defer to Mr. Sabin to give you that answer, but SIGIR focuses on prosecuting U.S. citizens involved in corruption.

Mr. JOHNSON. All right.

Mr. Sabin?

Mr. SABIN. The United States has traditional fraud statutes, mail fraud, wire fraud, which have had extraterritorial application in order to assert jurisdiction over individuals that have a scheme

to defraud, make false representations in order to obtain taxpayers' money.

So, as a general proposition, the extraterritorial application of fraud-based statutes that the U.S. attorney's office could assert in a U.S. district court. So the direct answer is yes to that general proposition.

Depending upon the status of the individual, whether there is extradition treaties for particular locations, then you get into the details.

Mr. JOHNSON. Thank you.

Mr. Grayson, according to your testimony, one of the reasons why the Civil False Claims Act has been unsuccessful in punishing and preventing war profiteering is because the Bush administration has done nothing to pursue those cases, and you just heard from Mr. Sabin taking strong offense at your characterization of what you call perpetual court orders sealing cases as evidence. He takes issue with your assertion that the sealing of these cases actually stops the process. How would you respond to that?

Mr. GRAYSON. Well, there has never been a case under the False Claims Act in 144 years of history where an entire class of cases has remained under seal for years and years until now. The Iraq False Claims Act cases have remained under seal for years and years even though the statute says 60 days is the prescribed period.

Mr. Sabin is in the criminal division. He has no responsibilities regarding the Civil False Claims Act. So he is literally not competent to testify about this.

It is also true that——

Mr. JOHNSON. Well, now hold on. Let me give Mr. Sabin an opportunity to respond to that.

Mr. SABIN. I had, with all due respect, Counsel, the opportunity to discuss the matters with our civil division folks. He is correct that I am in the criminal division—and proud of that—at the Department of Justice, but had the opportunity to chat with our colleagues in the civil division regarding Mr. Grayson's comments in his statement.

I believe some are inaccurate. Some are accurate with respect to the Custer Battles case. For example, he refers to that particular case. The Department of Justice civil division 2 weeks ago filed a brief in the Fourth Circuit Court of Appeals supporting Mr. Grayson's position. We filed pleadings in the district court in the Eastern District of Virginia in support of Mr. Grayson's position there.

So we take issue that cases have not been brought. We have had two matters that have been specifically addressed by the civil division.

Mr. JOHNSON. Why are there so many cases that are still under seal?

Mr. SABIN. A number of reasons. I can talk you through them.

One is lack of verifiable evidence that is in the complaint filed by the relater.

Second, we need timely cooperation by counsel as well as the relater to be interviewed to provide the information to further the investigations to determine whether or not to intervene in the particular matter.

Third, as discussed previously, the gathering of evidence is a challenge, especially in the international forum and especially in war theaters and combat zones.

Additionally, you need the cooperation of defendants and third parties, and that cooperation varies widely. It is not necessary in each matter, but in some matters, that cooperation can help facilitate the expeditious development of the case, and non-compliance, for example, with inspectors generals' subpoenas that are issued in that regard.

You have the coordination in parallel investigations between the criminal prosecutors and the civil prosecutions.

You have the administrative aspect relating to suspension and debarment, so you have the coordination in terms of a potential global resolution of administrative, civil and criminal all coming together in order to appropriately address the matter.

Mr. JOHNSON. How many people in the civil division dealing with these kinds of——

Mr. SABIN. At the headquarters civil division, there are 13 line attorneys and three supervisors. That does not include the number of civil attorneys around the country in the United States attorney's office and in particular the Central District of Illinois that are addressing the matters.

Mr. JOHNSON. All right. And last question, do you agree with Mr. Bowen's assertion that $5 billion is the extent of the alleged corruption, alleged fraudulent misconduct in Iraq?

Mr. SABIN. I believe he and his staff are in a better position to know. So I would defer to that. I have no reason to doubt that number, but those individuals are the experts that are working through these matters in a professional and thorough fashion, and I have no reason to doubt that number.

Mr. BOWEN. The $5 billion has to do with the 2,000 cases that the Iraqis have on——

Mr. SCOTT. Did you say billion or million?

Mr. BOWEN. Five billion dollars that are involving cases that are being conducted by the Iraqi Commission on Public Integrity.

Mr. JOHNSON. I am sorry. All right. Thank you.

Thank you.

Mr. SCOTT. Thank you.

The gentleman from North Carolina?

Mr. COBLE. Thank you, Mr. Chairman.

Mr. Chairman, today has been one of those days when I had to be at five places simultaneously, so I apologize to you and the witnesses for my belated arrival.

Mr. Sabin, how do the Departments of Defense and Justice and the Office of SIGIR coordinate to investigate and prosecute alleged criminal acts associated with the war in Iraq?

Mr. SABIN. In a variety of fashions. We try to be working together in a coordinated fashion through the task forces that we have set up, the ones I referred to, the International Contract Corruption Task Force. That is the operational component.

And we are sharing information, exploiting intelligence, trying to figure out where the evidence will yield most productive investigation and prosecution. So that sharing of information, prosecutors and agents sitting down at an early stage in order to proactively

address it, through training, through coordination in what I refer to as the National Procurement Fraud Task Force, which has——

It is really pretty damn impressive because you have inspectors general themselves chairing each of the different subcommittees on legislation and training and private-sector outreach, government-wide, to really make it a significant long-term institutional change.

So not to look at just the individual criminal prosecution, but what as an industry in this unique time in our country's history should we be doing in order to fill regulatory gaps, really provide effective and robust coordination and prosecution, and it is something, I think, we are proud of and we are looking forward to successes in the coming months and years.

Mr. COBLE. Thank you, sir.

Mr. Bowen, is the FBI a part of the task force, the ICCTF, A; are they in theater, B; and are they the lead investigators on these cases? A three-prong question I have hurled at you.

Mr. BOWEN. Yes, Mr. Coble. The FBI is part of the International Contract Corruption Task Force, and the Joint Operations Center, which is the central facilitating operational arm of that task force, is co-located at FBI headquarters. I visited there a month ago, and, as I said in my statement, the Joint Operations Center is producing important work in support of our cases.

The FBI does have agents in Iraq. Many of them are involved in counterterrorism investigations, but we are working with them on our fraud cases as well, and I expect that it is a joint relationship, and, as you know, our organization is a temporary organization. Many of our cases will continue after SIGIR's expires at the end of next year, and I expect that the FBI will be inheriting a number of those cases.

Mr. COBLE. Thank you, Mr. Bowen.

Mr. Gimble, before my red light illuminates, if you will, briefly describe the investigations involving KBR and LOGCAP.

Mr. GIMBLE. The KBR and LOGCAP are joint investigations that have been conducted by the members of the International Contract Fraud Task Force of which our DCIS investigators are a part, and there is still an ongoing number of efforts in that respect largely run out of the Rock Island District.

Mr. COBLE. I did not hear the last part you said.

Mr. GIMBLE. Largely, the LOGCAP investigations are being done in theater, but also back in Rock Island, IL.

Mr. COBLE. But how long has the investigation extended or lasted?

Mr. GIMBLE. They started fairly early. They continue on. It started in 2004, I believe.

Mr. COBLE. Okay. So it has been going on about 2 or 3 years then.

Mr. GIMBLE. Yes, that is right.

Mr. COBLE. About 3 years.

Mr. GIMBLE. About 3 years.

Mr. COBLE. Thank you, Mr. Gimble.

Do you want to weigh in on that, Mr. Sabin?

Mr. SABIN. Yes, it is being conducted with the investigators out of the Central District of Illinois with assistance from main Justice. There have been eight different criminal matters brought as a re-

sult of those investigations. Some of those involve individuals associated with Kellog, Brown and Root.

Mr. COBLE. Thank you, Mr. Sabin.

I yield back, Mr. Chairman.

Mr. SCOTT. Thank you.

The gentleman from Massachusetts?

Mr. DELAHUNT. Mr. Sabin, I think I heard something about the docket in the Eastern District and that it is the court that controls the docket.

Mr. SABIN. I could clarify. I think what the witness was referring to was not the court's docket because these matters have not been criminally charged and are on the court's docket. To the extent that there has been public confirmation—and I am not going to get into specifics regarding any investigation—those matters may be ongoing within the Department of Justice as a grand jury investigation.

Mr. DELAHUNT. So there is not an indictment or any formal charge now?

Mr. SABIN. Correct. It is a misunderstanding.

Mr. DELAHUNT. So it is a misunderstanding.

Mr. SABIN. Yes.

Mr. DELAHUNT. So, for 3 years now, the Department of Justice has been doing presumably something?

Mr. SABIN. I am not going to comment upon any ongoing investigation, but the Department of Justice has set up a detainee abuse task force being operated out of the Eastern District.

Mr. DELAHUNT. If I can address this to Ms. Razook, how do you come up with the number 17?

Ms. RAZOOK. That number was reported several times, one in the By the Numbers report published by Human Rights First, New York University, and Human Rights——

Mr. DELAHUNT. So we do not know what the government is doing?

Ms. RAZOOK. Correct. That is the problem.

Mr. DELAHUNT. That is the problem. And neither, I can assure you, does this Committee know what the government is doing in this particular matter either, which is the problem as well, but——

Mr. SABIN. Mr. Delahunt, as a former prosecutor, you know that ongoing grand jury investigations and because of separation of powers and prosecutorial discretion, Congress should not——

Mr. DELAHUNT. I certainly understand that, but if there are 17, hypothetically, if that number is accurate, I would expect that, given the talent our Department of Justice has available to it, it could have, you know, proceeded in a more expeditious fashion. Three years even for the Federal Government is a Federal case, I would say.

Mr. SABIN. I am not going to confirm the timeframe with respect to each of those matters, but I have the highest confidence in the prosecutors in the Eastern District of Virginia and the U.S. Attorney Chuck Rosenberg to pursue those cases as appropriate.

Mr. DELAHUNT. Well, I would hope that that is the case. Of course, we do not know.

Mr. Bowen, once more, thank you for what you have done for this country. You have been a bright light in a rather dark chapter.

Mr. BOWEN. Thank you.

Mr. DELAHUNT. You know, I just read Mr. Gimble's testimony, and almost $10 million was paid to the U.S. in restitution, $323,000 was levied in fines and in penalties, $3,500 was forfeited, and $61,000 was seized in some litigation. Were we ever able to account for that $9 billion that your report indicated was unaccounted for?

Mr. BOWEN. Yes. You are referring to our January 30, 2005, audit of the——

Mr. DELAHUNT. Yes, I am.

Mr. BOWEN [continuing]. CPA's management of the Development Fund for Iraq money. That is Iraqi money.

Mr. DELAHUNT. Correct.

Mr. BOWEN. It was transferred by the CPA to the interim Iraqi government, and the answer is, no, the Iraqi government has not accounted well for what happened to——

Mr. DELAHUNT. And I understand the distinction, but I do understand—and you can correct me, please—that money was disbursed to the Iraqi government by the CPA

Mr. BOWEN. That is correct.

Mr. DELAHUNT. Nine billion dollars. And we are talking about $3,500 was forfeited. In Mr. Gayson testimony, when he uses billions in terms of fraud—and I guess you quoted someone in the other body about an orgy of greed—I have this uneasy feeling that we are missing something here. We are missing a potential substantial recovery.

Mr. Sabin, why hasn't the government participated under the whistleblower statute?

Mr. SABIN. We have brought two civil cases that have been resolved totaling $5.8 million in recovery, we have declined to intervene for a variety of reasons in, I believe, four others, and I believe three others that are public have been voluntarily dismissed by the relaters. The other matters, we will continue to review as appropriate, and when it is appropriate to unseal and/or decline to intervene, the Department of Justice will so advise.

Mr. DELAHUNT. Mr. Grayson?

Mr. GRAYSON. The Bush administration has not actually litigated a single case under the False Claims Act. The two settlements that Mr. Sabin is referring to were settlements. There was not litigation involved. They recovered a grand total of $5 million when $9 billion, as you just pointed out, Mr. Delahunt, is missing from the Development Fund of Iraq alone.

Not only that, but Senator Grassley wrote to the Attorney General 2 years ago asking why nothing is being done on these cases under the False Claims Act, and he never received a reply. Not only that, but KBR has never been sued for anything it has done wrong in Iraq by the U.S. Government. It has never been sued in any whistleblower case that the U.S. Government has participated in. The only people who have had to suffer for this are the taxpayers.

Mr. SABIN. Just a comment on that point. The letter that Senator Grassley sent on February 17 of 2005 was responded to by the Department of Justice on April 20 of 2005, 60 days later.

Mr. DELAHUNT. That is very good speed. That is a quick response. I wish all my letters were responded to as quickly, Mr.

Sabin. So I will take note, and I will credit the alacrity with which that response came. But I would hope and encourage you to have further conversations with Mr. Grayson regarding the cases which he is alluding to.

Mr. SABIN. And Mr. Grayson can correct me if I am wrong, but my understanding is the civil division does have ongoing, in certain matters, conversations with Mr. Grayson with respect to some of the matters that he is aware of. Some of them are sealed, so we cannot talk about specifics here today. But it is my understanding that in some matters that have been extended—and, again, Mr. Grayson can correct me if I am wrong—there has been a consent by him to that extension.

Mr. GRAYSON. There has never been a single case picked up by the Justice Department that I have brought or that any other attorney has brought under the whistleblower statute since the war began. That is a fact.

Mr. DELAHUNT. Well, I think my time has expired, but I am not defending the Justice Department, Mr. Grayson. That has not been my customary practice, but I do think it is an issue sometimes of resources, and Mr. Sabin is not in a position to say that. But I think we underresource the Department in situations where it works to wreak an injustice, if you will, but that will, I guess, be the subject of another hearing in another day.

Mr. SCOTT. The gentleman's time has expired.

Mr. Sabin can get an opportunity to respond to whether or not you have sufficient resources to effectively prosecute the issues before you——

Mr. SABIN. In the last few weeks——

Mr. SCOTT [continuing]. Or not.

Mr. SABIN. I have been up to Congress to talk about just just the fraud context: the Foreign Corrupt Practices Act and resources, the securities and corporate fraud endeavors of the Department of Justice, the mortgage fraud activity, the health care fraud activities and identity theft, and we want to speak with one voice with respect to the matter of resources. So——

Mr. SCOTT. When you come to speak, are you asking for more resources?

Mr. SABIN. And what I say is that, as Mr. Delahunt pointed out, there are appropriate channels for those discussions to occur in terms of appropriations and budget authority.

Of course, an individual prosecutor would want to come up here and say, "Give us more resources in order to undertake legitimate efforts in a priority area," but given all the different matters that are before the Congress and before the Justice Department, we say there are appropriate channels, we welcome an opportunity to engage us in dialogue in order to address the resource allocations.

Mr. SCOTT. Well, those are some choices, I guess, we have. If you would just tell us what you can do with what you have and what you could do if you had a little bit more. I mean, last time we had one of these hearings, it was on identity theft, and I had a bill to give you more money, as you may remember. I think you were the one testifying, as a matter of fact.

Mr. SABIN. I do not think it was identity theft. I have been up here a few times, but I do not think it was identity theft.

Mr. SCOTT. On identity theft. And we asked if you had enough resources, and you said, "Sure." You do not need my bill.

Mr. SABIN. No, I would not have said that, sir. That was not me.

Mr. SCOTT. Well, somebody did. Somebody did. And then I gave an example of the U.S. senator who had had his identity stolen and fraud run up, why that case had not been prosecuted, and the answer was it is a matter of resources.

Mr. SABIN. Again, I do not know——

Mr. SCOTT. So if you——

Mr. SABIN [continuing]. The specifics of that interaction.

Mr. SCOTT. If you just tell us what you can do with what you have and what more you can do, then we can decide whether or not we want that extra done, but if we all get is, "This is what we have, and we are not going to ask for more," we do not know the answers to his question.

Mr. SABIN. So what I am saying is we have a track record of success. With additional resources, we would work to use them effectively and efficiently consistent with budgetary restrictions in order to bring more civil cases and criminal cases, or at least sort through the matters, as you could, with more resources.

Mr. SCOTT. Well, we have a kind of vague idea of what the problem is.

Mr. Grayson, did I understand you to say that you believe that $9 billion—with a B—is missing over in Iraq?

Mr. GRAYSON. Yes, from the Development Fund of Iraq alone.

Mr. SCOTT. Okay.

Mr. Bowen, you, as I understand your testimony, were in the low double-digit millions.

Mr. BOWEN. Yes. The Development Fund for Iraq money is not U.S. money. It is Iraqi money. I was talking about U.S. money.

Mr. SCOTT. Okay. So the $9 billion Iraqi money—you are not disagreeing with that figure?

Mr. BOWEN. No, that was the result from our audit January 30, 2005, looking at the CPA's transfer of Development Fund for Iraq money to the interim Iraqi government.

Mr. SCOTT. Mr. Grayson, who is in charge of the $9 billion?

Mr. GRAYSON. Well, a substantial amount of the Development Fund of Iraq money actually came from the United States. It included seized funds that were seized in the battlefield, vested funds that the Administration seized in bank accounts in this country and appropriated funds as well. So the——

Mr. SCOTT. And, Mr. Bowen, we are not interested in that money being spent appropriately?

Mr. BOWEN. To clarify, it is Iraqi money. It was Iraqi money that, as a result of the Oil for Food process, was kept in the Federal Reserve Bank of the Southern District of New York. However, it was Iraqi money. None of the Development Fund for Iraq money was U.S. money.

Mr. SCOTT. Okay. In terms of U.S. money, have any of the no-bid, cost-plus contracts and multiple layers of subcontracting resulted in the actual cost of the work being escalated because you had to go up through many channels? Has that caused any waste of the United States taxpayers' money?

Mr. BOWEN. Yes, it has. And our audits point that out. For example, in our inspections, the Baghdad Police College inspection, which we have reported on several times, the primary health care clinic program, and we have analyzed lessons learned from that process in our Contracting Lessons Learned report to Congress which was provided last August.

Mr. SCOTT. And has anything been done to cure these problems?

Mr. BOWEN. Yes, Senator Collins has a bill she introduced to implement a number of the recommendations in our Contracting Lessons Learned report that will improve—significantly, in my view—the cost-plus contract process.

Mr. SCOTT. Has the Administration done anything administratively to address that yet?

Mr. BOWEN. Yes. As our Lessons Learned report lays out, the story of contracting in Iraq is the story of lessons learned itself, gradual progress in the formation of entities, like the Joint Contracting Command in Iraq that provided adequate numbers of contracting options, that provided adequate systems to keep track of how quality control, quality assurance were carried out, more specifically to keep track of how those contracts were monitored from a financial perspective.

Mr. SCOTT. And Ms. Collins' bill is pending now over in the Senate?

Mr. BOWEN. Yes, sir. That is right.

Mr. SCOTT. And your recommendation is that we pass that legislation?

Mr. BOWEN. Very strongly. Yes, sir.

Mr. SCOTT. Mr. Sabin, just two other questions. You indicated that you had some comments to make on the new bill on war profiteering, I think your definitions and some of the complications that may take place if you try to change the law midstream.

Mr. SABIN. Yes, sir. Yes. And you could find that laid out in detail in my May 18 response to Senate testimony and questions for the record on the Senate side dealing with the War Profiteering Act, and we can get you those in particular. But they fall into three general concerns: definitional, intent and jurisdictional. I could go through them if you are interested.

Mr. SCOTT. Well, it is your position that you can work with the present law to chase after war profiteers better than a new law?

Mr. SABIN. No, I am saying that in the new law, there are some good recommendations relating to venue and penalties and other aspects. If you decide not to pursue the War Profiteering Act, that you could augment existing fraud-based statutes to provide additional tools and additional penalties for criminal prosecutions. If you choose to pursue the War Profiteering Act as a mechanism, in terms of those definitional terms and jurisdictional concerns, we would be happy to work with you in order to address that.

Mr. SCOTT. Okay. And finally, the gentleman from Georgia asked you why things were under seal for so long. I think your answer tended to speak to why the cases are taking so long, but not specifically why they are still under seal.

Mr. SABIN. They are under seal because a judge had ruled that they should remain under seal based upon the submission for good

cause by the government in terms of its actual assertions in the civil realm relating to False Claims Act matters.

Mr. SCOTT. And those pleadings would be under seal, too?

Mr. SABIN. Correct.

Mr. SCOTT. So does the other side get to see those pleadings?

Mr. SABIN. In certain instances, I believe there are discussions with counsel and relaters, but not all aspects of that are in every case undertaken.

Mr. SCOTT. Well, in civil litigation, if it is a Civil False Claims Act, you may not be involved in the case. Is that right?

Mr. SABIN. Well, it depends. If we decide not to intervene——

Mr. SCOTT. You can intervene. No, you do not have to intervene.

Mr. SABIN. Correct. And that is——

Mr. SCOTT. But you intervene and it is an ex parte proceeding as to whether it stays under seal?

Mr. SABIN. Correct.

Mr. SCOTT. I want to thank all of the witnesses for their testimony.

Mr. DELAHUNT. Mr. Chairman, are we having a second round?

Mr. SCOTT. Yes. The gentleman from Massachusetts?

Mr. DELAHUNT. Yeah, I posed the question to the Chair because I thought the Chair had a second.

Mr. SCOTT. Yes, you are right.

Mr. DELAHUNT. Professor Horton, you earlier talked about almost reaching parity in terms of private contractors and military personnel. I think your figures were 120,000 to 100,000. It might have been before the surge.

Mr. Bowen, if you know the breakdown in terms of compensation for the 100,000 contractors—you might not have this available—I suspect that it is considerably higher than the remuneration for military personnel. If you can give us a comparison, it would be most welcome.

Mr. BOWEN. Mr. Delahunt, I do not have that yet. We have ongoing audits of Blackwater, and we expect to have that completed for our fall quarterly report, and we will have follow-on reviews of security contractors, so I do not want to venture a number until we have supportable data.

Mr. DELAHUNT. Thank you.

Professor Horton, would you be willing to take a stab, and I understand this is an estimate.

Mr. HORTON. Well, on an individual basis, I, in fact, interviewed in Baghdad a number of security contractors about their pay background and, of course, a large part of them, particularly among the elite units, came from our Special Services. They were being compensated at a level of around $30,000 a year, some a little bit more than that. And going into high-level security contractor operation, the compensation level was running between $110,000 and $135,000. So it is quite substantially larger.

Of course, this is a very, very simple way of approaching it.

Mr. DELAHUNT. I understand.

Mr. HORTON. One needs to fold in a number of other criteria, health benefits, pension and so forth.

Mr. DELAHUNT. But it is still the American taxpayer that is paying those private contracts, as well as the military personnel. And

is it a fair statement to say that our military loses something in terms of its talent available by pursuing a private army, if you will?

Mr. HORTON. Well, I will just say I have repeatedly heard representatives of the industry say that they are a cheaper alternative, and I have never been able to put together numbers that would show that. It seems to me that that would be very, very difficult to display.

And, of course, we are looking at hemorrhaging from our most talented people in the Special Forces Operations. A lot of them describe to me the fact that they were looking for the earliest opportunity to exit and get higher pay. So we are working against ourselves in that respect.

Mr. DELAHUNT. Thank you, Professor.

Mr. Grayson, why is it preferable from the perspective of a whistleblower to have the participation of the government?

Mr. GRAYSON. Well, the government has the imprimatur of speaking on behalf of the taxpayer. In fact, interestingly enough, the statute provides that the whistleblower gets more money when the whistleblower proceeds with the case himself without the government's assistance, but whistleblowers want the government's assistance because it is the government's money that is out there.

When you look at it from a judge's point of view, the judge asks himself, "If the Justice Department does not care about this case, why should I?" and that is an uphill battle for every whistleblower in every case that the Department of Justice declines to prosecute, including the many cases that it has declined to prosecute against KBR already.

Mr. DELAHUNT. In terms of resources and access to information, I presume—you can correct me—and, Mr. Sabin, you can join in—correct if I am wrong—but I would presume that access to information would be much more readily available with the participation of the government.

Mr. GRAYSON. That is true, and I believe the government's allocated substantial resources within DoD for this purpose. It has allocated substantial resources within the FBI for this purpose. The Defense Criminal Investigative Service has done very thorough investigations of the cases that I have been involved in. The roadblock, the barrier is the Department of Justice. The Department of Justice will not go forward with whistleblower cases brought concerning contractor fraud in Iraq.

Mr. DELAHUNT. Thank you.

Mr. Sabin, if you are aware in terms of ex parte, as we were referring to earlier when you were being questioned, has the government ever been denied its motion?

Mr. SABIN. I can get back to you on specifics, but the general answer is yes as to the extent of the length of the time that we had——

Mr. DELAHUNT. So it is a time issue? It is not——

Mr. SABIN. I believe that is accurate.

Mr. DELAHUNT. But you can renew that request, I presume.

Mr. SABIN. No, I think that, for example, a judge may say you cannot go past X date in certain jurisdictions. It varies jurisdiction to jurisdiction, is my understanding, and some judges will not go

in certain jurisdictions past a particular time period, and we work with that, obviously, under the court's order.

Mr. DELAHUNT. Thank you.

Mr. SCOTT. The gentleman's time has expired.

We want to thank the witnesses.

Do any of the witnesses have any last-minute very brief comment to make? I am not inviting it, but I noticed at one point Professor Horton was about to jump out of his seat, but I think that issue had been explained.

I want to thank you very much for your testimony. There may be additional questions that we would ask you to respond to in writing for the Committee, but if there is no further business, the Committee stands adjourned.

[Whereupon, at 3:47 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

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DEMOCRATIC CAUCUS
WHIP
CONGRESSIONAL BLACK CAUCUS
CHAIR
CONGRESSIONAL CHILDREN'S CAUCUS

CONGRESSWOMAN SHEILA JACKSON LEE, OF TEXAS

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

LEGISLATIVE HEARING: H.R. 400 AND H.R. 369
"THE WAR PROFITEERING PREVENTION ACT OF 2007"
AND
"THE TRANSPARENCY AND ACCOUNTABILITY IN SECURITY CONTRACTING ACT OF 2007"

JUNE 19, 2007

Thank you, Mr. Chairman for holding this hearing. I am confident that working together with all members of the subcommittee we can address and resolve the real challenges regarding war profiteering and dishonorable conduct by some federal

contractors serving overseas in Operation Iraqi Freedom, Operation Enduring Freedom, or the broader Global War on Terror.

The purpose of today's hearing is to analyze the merits of H.R. 400 and H.R. 369.

H.R. 400, "The War Profiteering Prevention Act of 2007," strengthens the tools available to federal law enforcement to combat contracting fraud during times of war, military action, or relief or reconstruction activities. The legislation creates a new criminal offense in title 18 of the United States Code for fraudulent acts involving contracts or the provision of goods and services in connection with war, military actions, and relief or reconstruction activities. This legislation also extends the extraterritorial jurisdiction for these frauds to the full extent of the law in order to reach fraudulent conduct wherever it occurs.

H.R. 369, the "Transparency and Accountability in Security Contracting Act of 2007," the bill before us, provides for criminal investigations and prosecutions of contractors for crimes committed overseas. Currently the Military Extraterritorial Jurisdiction Act which criminalizes offenses by members of the Armed Forces outside the U.S. does not explicitly cover these contractors. Specifically, H.R.

369 extends the Military Extraterritorial Jurisdiction Act to cover all private security contractors, not just those contracted through DOD, to ensure that they are accountable under U.S. law, and establish an FBI Theater Investigative Unit to investigate reports of criminal misconduct. The bill also requires the Justice Department Inspector General to monitor U.S. efforts to prosecute alleged misconduct by private security contractors.

To help us better understand the problems in the area of war profiteering and other abuses by federal contractors involved in the Iraq War, we have an impressive panel of witnesses, whom I am delighted to welcome to the subcommittee. They are:

- The Honorable Stuart W. Bowen, Jr., Special Inspector General for Iraq Reconstruction, Arlington, VA
- Mr. Thomas F. Gimble, Principal Deputy Inspector General, United States Department of Defense, Washington, DC
- Mr. Barry M. Sabin, Deputy Assistant Attorney General, United States Department of Justice, Washington, DC
- Mr. Alan Grayson, Grayson & Kubli, P.C., McLean, VA
- Mrs. Erica Razook, Legal Advisor to the Business and Human Rights Program, Amnesty International, New York, NY
- Mr. Scott Horton, Adjunct Professor of Law, Columbia University School of Law, New York, NY

Mr. Chairman, the Bush Administration has justified the award

of lucrative no-bid contracts claiming exigent circumstances. The spending on no-bid contracts has more than doubled under the Bush Administration. The time has come again for us to continue in the tradition of restoring accountability back into Congress. This legislation builds on the progress we have made to return to the basic principles of fiscal responsibility and restore Congress's role as a check on the Executive Branch.

Transparency and integrity is needed in order for accountability to be restored in the federal contracting process so that taxpayers' money can be protected from waste, fraud, and abuse. The effect of this legislation would change federal acquisition law to require agencies to limit the use of emergency no-bid contracts and to increase transparency and accountability in federal contracting in an effort to protect the taxpayers' money.

An estimated $10 billion in Iraq reconstruction spending has already been wasted and the waste will continue until legislation makes it a requirement for agencies to limit the use of these abuse-prone contracts. Congress has held multiple hearings over the abuse that has occurred regarding such waste in federal contracting and now we must act. Waste and fraud occurred not only with Iraq

reconstruction contracts but also in connection with Hurricane Katrina recovery efforts.

Reports of government contractors defrauding the Coalition Provisional Authority of tens of millions of dollars in Iraq reconstruction funds have surfaced and this Administration has done little to try to recover the money. It is time to clean up fraud in Iraq and elsewhere.

I wholeheartedly support strengthening the nation's federal acquisition laws to require agencies to limit the use of abuse-prone contracts. I also believe those who violate the laws and rip off the public treasury should be prosecuted to the fullest extent of the law.

Again, thank you for convening this important hearing, Mr. Chairman. Let me extend my warm welcome to our witnesses. I look forward to hearing their testimony.

PREPARED STATEMENT OF THE HONORABLE NEIL ABERCROMBIE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF HAWAII

Chairman Conyers and Members of the Judiciary Committee:

I am grateful to the Committee and its distinguished Chairman for today's hearing on HR 400, the "War Profiteering Prevention Act of 2007," and for affording me the privilege of submitting testimony for the record.

Mr. Chairman, among the many significant consequences of the Bush Administration's decision to invade and occupy Iraq, marked by a complete dismissal of the need for intelligent planning and stunning incompetence in the conduct of the war, one area has received too little attention from the news media, the public and the Congress.

The United States Government, directly and through the late Coalition Provisional Authority, has outsourced the war in Iraq like no other in our history, spending more than $50 billion to hire private contractors to provide food, water, gasoline and other supplies, guard bases, drive trucks and many other activities in support of our troops. But consistent with the Administration's overall attitude toward spending public money with private companies, little or no thought was given to contract oversight or accountability.

As a result, The U.S. occupation of Iraq has been viewed by some of these contractors as "open season" on the American taxpayer. At least ten companies, with billions of dollars in contracts, have already been forced to pay more than $300 million in penalties to resolve allegations of bid rigging, fraud, gross overcharging, delivery of faulty military parts and environmental damage. Some of these same companies have faced such allegations during past military operations in other countries, but have had no problem receiving new contracts in Iraq.

Cleaning up this mess has been hampered by the fact that while there are anti-fraud laws to protect against the waste or theft of U.S. tax dollars in the United States, there have been no statutes prohibiting such sleazy business practices by American companies overseas. Legal jurisdiction continues to be a question.

As examples:

- One contractor was found guilty of 37 counts of fraud, including false billing, and was ordered to pay more than $10 million in damages. However, the decision was subsequently overturned because contracts were let through the Coalition Provisional Authority, and since CPA was not strictly considered to be part of the U.S. Government, U.S. laws against fraud did not apply.
- Despite millions of dollars in payments to U.S. companies, key pieces of Iraq's infrastructure, such as power plants, telephone exchanges, and sewage and sanitation systems, have either not been repaired, or have been fixed so poorly that they still don't function.
- A large U.S. construction company was paid tens of millions to repair raq's schools. Many of the schools were never touched, and several that were "repaired" were left in shambles; one filled with unflushed sewage.

Mr. Chairman, there is example after example of the flagrant abuse of the public's trust and the public's money during a time of war:

According to testimony before the House Appropriations Defense Subcommittee, when the wrong computer equipment arrived in Iraq, the contractor dumped it into a mammoth "burn pit" and placed an order for a replacement rather than sending it back. The government paid for both the wrong computer and the replacement, and the contractor collected a fee for each, thanks to a cost-plus contract.

Halliburton had drivers driving empty trucks between bases in Iraq—unnecessarily exposing drivers to danger—because the company was paid by the trip, not by the amount of materiel hauled or a flat fee.

$186 million was spent over two years to build 142 health care centers. Yet, only 15 were completed and only eight are open. According to testimony, the contractor lacked qualified engineers, hired incompetent subcontractors, failed to supervise construction work and failed to enforce quality control.

Obviously, these practices cannot be allowed to continue. My bill, House Resolution 400, the War Profiteering Prevention Act of 2007, would:

1. Criminalize "war profiteering," defined as bid rigging, contract fraud or overcharging for goods and services during a time of war, military action or a reconstruction effort.
2. Violations of the law would be a felony, and punishable by up to 20 years in prison and fines of up top $1 million or twice the illegal profits of the crime.

3. Jurisdiction for such cases, no matter where the alleged crimes are committed, would be in United States Federal Court.

There is a companion bill in the other body, S. 119 by Senate Judiciary Committee Chairman Patrick Leahy. S. 119 has been approved by the Judiciary Committee and awaits floor action. Senator Leahy referred to the rampant contactor fraud and abuse in Iraq as a "second insurgency."

Mr. Chairman, most of the cases of fraud, questionable business practices and outright corruption have been uncovered and investigated through the efforts of the Special Inspector General for Iraq Reconstruction (SIGIR), Mr. Stuart W. Bowen, Jr., who is scheduled to give testimony before your committee today. Mr. Bowen and his superb staff, both here in the U.S. and on the ground in Iraq, have provided the sole oversight, under the most difficult conditions imaginable, for billions of American tax dollars intended to support our troops in combat. They deserve the gratitude of the Congress and the nation for a tough job done well.

A testament to the effectiveness of Mr. Bowen's operation is that in the closing hours of the 109th Congress, there was an attempt to insert a provision in the conference report of the 2007 National Defense Authorization Act that would have prematurely shut down the Special IG's office. Only the wary eye House Armed Services Committee Chairman Ike Skelton caught the attempt and immediately introduced and passed a bill to, not only continue, but extend the life or SIGIR.

Mr. Chairman, I appreciate today's House Judiciary Committee hearing on HR 400 and on the continuing problem of wartime profiteering in Iraq, and I am grateful for the opportunity to submit testimony for the record. I will do anything I can to assist the Committee in its deliberations.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 28, 2007

The Honorable Patrick J. Leahy
Chairman
Committee on Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter presents the views of the Department of Justice on S. 119, the "War Profiteering Prevention Act of 2007." While we welcome new tools to combat fraud committed by military contractors, which is a priority enforcement area for the Department, we are concerned that S. 119 would have a negative impact upon existing criminal statutes. We welcome the opportunity to work with Committee staff to address these concerns.

Currently, the Department has a number of powerful statutes that are not limited to specific international undertakings by the United States. These statutes have universal application to all fraudulent schemes undertaken against the United States, including those schemes associated with war profiteering. We are concerned that legislation targeted toward fraud occurring during particular events (as S. 119 is targeted) may have the unintended consequence of eroding the application of time-tested general fraud statutes to specific events, setting the precedent that fraud in each new situation requires its own new fraud statute before effective prosecution can be undertaken.

The Department has had great success in prosecuting contractor fraud under 31 U.S.C. § 5332 (bulk cash smuggling), 41 U.S.C. § 51 *et seq.* (the Anti-Kickback Act), and 18 U.S.C. §§ 1031 (major fraud against the United States), 1001 (false statements made in any matter within the jurisdiction of the United States), 1956 and 1957 (money laundering), 1341 (mail fraud) and 1343 (wire fraud), among others (hereinafter, the "general fraud statutes"). To the extent that problems have surfaced in applying these statutes or others to the types of criminal procurement fraud associated with war profiteering, we offer the following suggestions for amending the general fraud statutes in order to eliminate those obstacles:

- To the extent that establishing venue over criminal targets in Iraq and other overseas locations could be a problem in future criminal matters, a new provision

(similar to the one contained in S. 119) could be added to the general fraud statutes that places venue "in any district where any party to the contract or provider of goods or services is located."

· The general fraud statutes could be amended to provide for higher statutory maximum sentences if the illicit conduct occurred in connection with "war, military action, or relief or reconstruction activities" (assuming these terms were defined adequately).

· 18 U.S.C. § 1956 (money laundering) could be amended to list certain general fraud statutes (*e.g.*, 18 U.S.C. § 1031 and 41 U.S.C. § 51) as "specified unlawful conduct."

· 18 U.S.C. §§ 981 (civil forfeiture) and 982 (criminal forfeiture) could be amended to include forfeiture of property derived from proceeds traceable to violations of certain general fraud statutes (*e.g.*, 31 U.S.C. § 5332 (bulk cash smuggling) and 41 U.S.C. § 51 *et seq.* (the Anti-Kickback Act)).

· The general fraud statutes could be amended to include an explicit provision for extraterritorial jurisdiction.

By amending our time-tested general statutes in these ways, Congress would improve these statutes significantly without creating a new fraud regime.

If, notwithstanding these problems, the Committee proceeds with S. 119, we would welcome the opportunity to work with your staff to eliminate several technical problems with the current language that might weaken our ability to successfully use these provisions. We offer the following examples:

· In subsection (a)(1), the phrase "in connection with a war, military action, or relief or reconstruction activities" is vague. Clearer definition of the terms in this phrase would deflect future legal challenges.

· In subsection (a)(1), the meaning of "within the jurisdiction of the United States" is unclear. We recommend adopting language from 18 U.S.C. § 1031(a), which is more specific in that it links the illicit conduct to a primary or subcontractor's "contract with the United States." For example, we would want to clarify the extent to which the proposed legislative language is distinct from terms like "special and maritime jurisdiction" articulated in 18 U.S.C. § 7(9).

· Subsection (a)(1) would impose an additional element of proof that would complicate our prosecutions. The provision includes the term "willfully" notwithstanding that other existing provisions in title 18 such as those relating to

bank fraud, wire fraud, mail fraud, and major fraud against the United States, do not impose a "willful" requirement. We are concerned about including an additional and unnecessary element of proof. Similarly, the use of the term "specific intent," which is not found in statutes such as the securities fraud provision of 18 U.S.C. § 1348, seems to create a higher burden of proof for the Government than would be necessary in order to address this type of criminal conduct effectively.

· Subparagraph (a)(1)(A)(ii) does not provide a means by which we can determine whether a good or service is "materially overvalued." Similarly, the term "excessively profit" is problematic, especially as applied to military contractors in a war zone where reasonable profits may be difficult to ascertain.

· Subparagraph (a)(1)(B)(i) appears to be unnecessarily vague. The provision would make it a crime "to falsify, conceal, or cover up by any trick or scheme a material fact." However, it is unclear to what the material fact must be material. It may be that subsection (a)(1) could be read to limit this to a material fact "in any matter involving a contract or the provision of goods. . .," but this does not appear to solve the vagueness problem with respect to subparagraph (a)(1)(B)(i).

· Subsection (b) provides for "extraterritorial Federal jurisdiction." Although we do not necessarily oppose this provision, we are concerned that it might have the unintended consequence of undermining the Department's efforts to apply the general statutes extraterritorially because the general statutes do not contain such a provision. Circuit Courts have held the general statutes could be applied extraterritorially notwithstanding the absence of such a provision. *See United States v. Kim*, 246 F.3d 186 (2d Cir. 2001) (holding wire fraud statute could be extraterritorially applied).

· The Committee might consider including in S. 119 a provision for conspiracy or attempt.

· We recommend amending 18 U.S.C. § 2516(c) (authorization for wire interception) to include S. 119 as a predicate statute for authorizing wire interception.

Thank you for the opportunity to present our views. Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

Richard A. Hertling
Acting Assistant Attorney General

cc: The Honorable Arlen Specter
Ranking Minority Member

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United States Senate

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February 17, 2005

Via mail and facsimile (202) 324-6490
Original via USPS Mail

The Honorable Alberto Gonzales
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20535

Dear Attorney General Gonzales:

As a long-standing and outspoken critic of waste, fraud and abuse in the United States Government, and as a committed supporter of the False Claims Act ("FCA"), I want to bring to your attention a matter involving fraud, waste and abuse that may have occurred during the reconstruction of Iraq. Specifically, it has come to my attention that the United States Government has been invited to address an important issue regarding the FCA in the U.S. District Court for the Eastern District of Virginia.

In an order dated December 21, 2004, United States District Court Judge T.S. Ellis, III invited the United States Government to brief the court by January 21, 2005 (subsequently continued by additional orders, to February 18, 2005), on its position regarding the application of the FCA to contracts administered under the purview of the Coalition Provisional Authority ("CPA") in the matter of *United States ex rel. DRC, Inc. et al. v. Custer Battles, LLC*, Case No.1:04cv199 (E.D. Va.). This is the first case to be unsealed that relates to fraudulent contracting during the reconstruction of Iraq. Accordingly, I request that you keep me advised as to whether or not the Department of Justice (Department) intends to file a brief on behalf of the U.S. Government in this seminal matter.

As the American public continues to bankroll a vast majority of reconstruction and stabilization projects in Iraq, billions of taxpayer dollars are at stake. If the FCA is found not to apply to any contract entered into by the CPA, any recovery for fraud, waste and abuse of taxpayer dollars under the FCA would be prohibited. In addition, I would like to remind you of the potential danger that a negative precedent in this matter would create for the future claims filed under the FCA.

In closing, I thank you for the commitment you gave me at your confirmation hearing to ensure that the FCA is protected. In working to root out waste, fraud and abuse of taxpayer dollars I have found no tool more helpful than that of the FCA. As the Senate author of the 1986 amendments to the FCA, I have fought long and hard to strengthen that law and I continue to believe that it is instrumental in preventing wasteful spending in all government programs.

As the deadline for filing a brief on this matter is February 18, 2005, I would appreciate a status update on this matter before the filing deadline passes. Should you have a questions on this matter or any other matter please feel free to contact either Emilia DiSanto or Nick Podsiadly of my staff at 202.224.4515.

Sincerely,

Chuck Grassley

Charles E. Grassley
United States Senator

TOTAL P.03

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 20, 2005

The Honorable Charles E. Grassley
United States Senate
Washington, D.C. 20510

Dear Senator Grassley:

This responds to your letter dated February 17, 2005, to the Attorney General regarding an invitation from the U.S. District Court for the Eastern District of Virginia for the government to address the applicability of the False Claims Act (FCA) to contracts entered into by the Coalition Provisional Authority (CPA) in Iraq.

Please be assured that the Department of Justice is committed to vigorous enforcement of the FCA. The FCA has been a key instrument in the government's success in combating fraud in government programs and obtaining billions of dollars for the Treasury. We zealously oppose attempts to restrict the FCA from achieving its intended purposes, and we aggressively pursue those who, for their illegal private economic gain, have defrauded the government and the American taxpayer of public funds and the integrity of the government's programs.

As you noted, the issue of the FCA's applicability to CPA contracts has arisen in the case of *United States ex rel. DRC, Inc. et al. v. Custer Battles, LLC, et al.*, Case No.1:04cv199 (E.D. Va.). The relators have been conducting the litigation on behalf of the government since last fall when the United States declined to intervene in the case. The Court, nevertheless, invited the government to file a brief setting forth the government's position with respect to whether the FCA applies to false claims made or presented to the CPA. On February 25, the government accepted the Court's invitation and filed a brief on April 1, 2005, addressing the issue. (Enclosed)

Thank you for your inquiry. Please do not hesitate to contact this office if we may be of further assistance on this, or any other matter.

Sincerely,

William E. Moschella

William E. Moschella
Assistant Attorney General

Enclosure