

**COMBATING WAR PROFITEERING: ARE WE DOING
ENOUGH TO INVESTIGATE AND PROSECUTE
CONTRACTING FRAUD AND ABUSE IN IRAQ?**

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

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**COMBATING WAR PROFITEERING: ARE WE
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TUESDAY, MARCH 20, 2007

UNITED STATES SENATE,
COMMITTEE ON SENATE JUDICIARY,
Washington, D.C.

The Committee met, pursuant to notice, at 9:35 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Feingold, Cardin, Specter, and Coburn.

**OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S.
SENATOR FROM THE STATE OF VERMONT**

Chairman LEAHY. Good morning. As you may have gathered, talking up here, Senator Specter and I are friends. We go back to our days as prosecutors. Sometimes in this job that is a good background to have. He used it well in his days as Chairman, and we were trying to work out some of the logistics for the rest of the week.

Today, though, we have an issue of war profiteering, and the efforts to combat war profiteering have a long history. They go back almost as far as the practice itself. During the Civil War, President Lincoln fought against war profiteers, denouncing them as “worse than traitors.” He pushed for the first Federal laws curbing this abuse. In World War II, President Roosevelt spoke out against “war millionaires” who made excessive profits exploiting the calamity of war. President Truman, when he served in the Senate, crossed this country holding now famous public hearings to expose gross fraud, waste, and abuse by military contractors. As we observe the fourth anniversary of the Iraq war this week, we continue to face war profiteering in that conflict. As Iraq Study Group Co-Chair Lee Hamilton testified before this Committee just a few weeks ago, contracting fraud and abuse significantly undermine the current efforts in Iraq.

Our Nation has sent nearly a half a trillion dollars to Iraq—and we are on track to send a trillion dollars—with few or no controls over how that money has been spent. The Bush administration has chosen to use private contractors in this war to a greater extent than at any time in our history. The trend has raised the cost of this military action by untold billions. Predictably, these actions

have led to widespread fraud, waste, and abuse in Iraq on a scale that may be unprecedented in our history.

The Inspectors General before this Committee today have reported that billions of dollars spent in Iraq are unaccounted for and may have been lost to fraud or other misconduct. Billions of dollars. And if any of you are making out your tax returns for this time of the year, just think about that. It is your money. These Inspectors General have opened hundreds of investigations into fraud, waste, and abuse in Iraq, Kuwait, and Afghanistan involving illegal kickbacks, bid rigging, embezzlement, and fraudulent over-billing. These investigations have uncovered crimes committed by employees of the largest Government contractors in Iraq, including Kellogg, Brown & Root, a wholly owned subsidiary of Halliburton. Many of these matters involve abuse of the now infamous “cost-plus” and “no-bid” contracts so often used by the Bush administration to award huge sums to many who, it turns out, have close ties to the administration.

Despite these investigations and mounting evidence of fraud, the administration has committed precious few resources to investigate and prosecute those who have illegally exploited this war for profit.

I think they relied upon a Congress that would not ask questions. In fact, that same Congress—and it has changed—attempted to limit the investigation of fraud in Iraq, and they actually wanted to shut down the office of the Special Inspector General for Iraq Reconstruction. I am pleased that better sense prevailed and the Inspector General’s authority was reinstated after the people spoke last November.

During the nearly 4 years of war, the Department of Justice has failed to move aggressively enough in prosecuting fraud in Iraq. Today, the Inspectors General before us have opened hundreds of investigations, they still have more than 70 open and active cases in contracting fraud and abuse in this war. But so far, the U.S. Justice Department has only brought eight criminal cases involving 25 individuals over the last 3 years.

The crimes in a number of these cases were committed by employees of Kellogg, Brown & Root, one of the largest contractors in Iraq—as I said, a wholly owned subsidiary of Halliburton. In these cases, the employees have admitted to receiving kickbacks, inflating costs, embezzling money, and stealing millions from the American people. But so far, the Justice Department has brought no legal action, civil or criminal, against KBR or Halliburton.

Now, just last week, we learned that Halliburton will move its CEO’s headquarters outside the United States to Dubai. They apparently plan to spin off KBR. One of the late-night comics said that moving to Dubai was because of the location—just outside the reach of the long arm of the law. I do not know whether that is so or not, but whether they are or not, the move is an insult to the U.S. soldiers and taxpayers who have paid the tab for these low-bid contracts and “no-bid” contracts, and endured these overcharges all these years.

I introduced the War Profiteering Prevention Act on the first day of this new Congress. This makes acts of war profiteering a specific crime and reaches all contracting fraud, whether it occurs in this country or outside. It applies to all reconstruction and relief activi-

ties overseas. I have been proposing versions of this bill since 2003. It actually did pass the Congress, but the White House brought pressure on the Republican leadership in the House, and they removed it from the conference committee.

A new law to combat war profiteering in Iraq and elsewhere is sorely needed, and long overdue. There are anti-fraud laws to protect against the waste of U.S. tax dollars at home, but no law to specifically cover when it is spent overseas.

So we want to send one message: Any act to exploit the crisis situation in Iraq or elsewhere overseas for excessive profit is unacceptable, is reprehensible, is criminal, and the American people will not stand for it. That kind of deceit demeans and exploits the sacrifices that our military personnel are making in Iraq and Afghanistan and around the world.

Combating war profiteering is not a Democratic issue or a Republican issue. It is an American issue. The American people are sacrificing so far to the tune of half a trillion dollars. We will at least double that amount. We ought to make sure at least—whether they agree with or oppose the war in Iraq—they ought to at least know that their tax dollars are being spent the way they should be.

[The prepared statement of Senator Leahy appears as a submission for the record.]

Senator Specter?

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman. I believe that the focus that you have brought to bear on this important issue is very, very important, with your legislation and with this hearing today. There is no better therapy to combat white-collar crime than a prison sentence. You and I both know that from our earlier days as prosecuting attorneys.

Senator Leahy and I frequently discuss our first meeting at a national convention of the District Attorneys Association when he was DA of Burlington, Vermont, and I was district attorney of Philadelphia. And that experience has demonstrated to both of us that you really attract the attention of white-collar criminals when they go to jail.

There are lots of arguments about whether deterrence is effective. You are not going to stop passion homicides with jail sentences because people are thinking about something else. But profiteering and commercial crimes, white-collar crimes, are customarily very, very carefully thought out. And I believe that President Lincoln had it right on the quotation which Senator Leahy has cited when he said that war profiteering was a characteristic worse than traitors.

I think there is something especially opprobrious about contractors going to Iraq and taking advantage of that situation at a time when so many brave young men and women are giving their lives or giving their limbs for their country. And at a time when the American taxpayers are being hit so very, very hard for the costs of Iraq, especially hard and especially difficult under those circumstances.

Before coming here this morning, I signed three letters to relatives of Pennsylvanians who had been killed in action, and later this week in the Appropriations Committee, where both Senator Leahy and I serve, we will be taking up the supplemental appropriation which has \$100 billion for Iraq. So it is especially disheartening to see what is going on there.

Since 2000, ten companies with billions of dollars in U.S. contracts for Iraq reconstruction have paid more than \$300 million in penalties to resolve allegations of bid-rigging fraud, and I sharply question whether these matters are appropriately resolved with agreements to pay penalties. Three hundred million dollars is not unsubstantial, but it may be *de minimis*, relatively meaningless, compared to the billions of dollars which are involved. Probably a very inexpensive license to cheat the American taxpayers.

We have seen a few convictions. The Custer Battles firm billed the Government about \$10 million when its actual costs did not exceed \$4 million, and it billed \$400,000 for a \$74,000 electric bill.

The Pentagon investigation found evidence that Halliburton had overcharged \$61 million for fuel deliveries from Kuwait to Iraq. Halliburton also admitted that two of its employees took nearly \$6 million in kickbacks.

Another major company, Bechtel, hired three subcontractors in Iraq that have been fined more than \$86 million over the last 4 years, and those contractors continue to work for Bechtel.

A subsidiary of Northrop Grumman, Vinnell Corporation, has been penalized over \$190 million over the last 4 years. The company now has a \$48 million contract to train a new Iraqi army. If this kind of conduct is met with a small fine or a relatively small fine, really a license, and then rehired, there is no incentive not to violate the law.

The majority of contracts for troop support overseas is on a non-competitive basis, which contrasts with regular contracting procedures which are full and open competition. Well, that ought to be changed. It may be difficult to find contractors to function in Iraq, but I think it can be done with sufficient diligence. And there are cost-plus contracts. Well, that again is an open invitation to run up the costs. So we are dealing with enormously serious problems here.

The reality is that the Judiciary Committee cannot trail all of these people, but we have a Special Inspector General for Iraq Reconstruction testifying here today. We have the Department of Defense Acting Inspector General. And we have the Criminal Division of the Department of Justice, which really ought to be focusing on these matters instead of so much e-mail traffic which captures all of our attention.

I am trying to get some of my colleagues on this side of the aisle to come down. We have had 3,000 documents delivered, and we are about to vote this morning on changing the procedures for replacing United States Attorneys. Every time we turn around, there is another major calamity, catastrophe, within the jurisdiction of this Committee. It will not be until tomorrow that we will have to review what the FBI has done or not done on National Security Letters. They came to us, asked for renewal of the PATRIOT Act, and the Judiciary Committee wanted to be patriotic, so we renewed the

PATRIOT Act. And we find major abuses in the National Security Letters.

We are in the midst of reviewing many, many documents to prepare for that hearing tomorrow, and a renewed call has come to take away the intelligence function from the Department of Justice and the FBI and give it to an analogy to what the British use. So that we are beset by problems, as we all know, and—

Chairman LEAHY. We have one less problem on things to read. With all due respect, Mr. Sabin's testimony did not arrive until after 5:00 last evening, and I remember—I liked the Specter rule on that, so he will not be testifying. We will put his statement in the record.

I also feel—

Senator SPECTER. May I commend you, Mr. Chairman, for finding one less problem.

Chairman LEAHY. What he is commending me for is following the Specter rule, but what I might say—and I know Senator Feingold wanted to make a brief remark here. But if you are having hundreds of millions of dollars of cost overruns and you get fined a couple million dollars when it is found out, it really is a cost of doing business.

I agree with Senator Specter. If people think they are actually going to go to jail, if they think the buyers are going to close on them, what I have found as a prosecutor is that had a lot more impact than any kind of fine or censure you might do.

Senator Feingold, did you want to say something before we start?

Senator FEINGOLD. Thank you, Mr. Chairman, for recognizing the need to hold—

Senator SPECTER. Excuse me one moment, Senator Feingold. I am going to have to excuse myself now. I will have staff here and will review the testimony very closely, and I will join Senator Leahy in his efforts to crack down on this malicious, vicious practice.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you. Well, Senator Specter, you have always been consistent on that, and I appreciate that. Thank you.

Senator Feingold?

**STATEMENT OF HON. RUSSELL D. FEINGOLD, A U.S. SENATOR
FROM THE STATE OF WISCONSIN**

Senator FEINGOLD. Thank you, Mr. Chairman, for recognizing the need to hold a hearing on this very important issue. I have to leave in a couple of minutes to chair my own hearing in the Foreign Relations Committee on Chad and the Central African Republic as it relates to Darfur and their own problems. But I would like to make a few brief comments about the importance of strong oversight and accountability for U.S. taxpayer dollars going to Iraq.

The Special Inspector General for Iraq Reconstruction plays a crucial role in investigating and reporting fraud and misuse of Iraq reconstruction funding. I recognize the difficult task that SIGIR staff has and commend the SIGIR for its efforts to bring increased transparency to U.S. reconstruction spending. I support efforts to ensure that SIGIR's unique role is preserved as long as this administration continues to request emergency funding for the Iraq war.

That said, I believe that we can do even more to deal with those who waste or fraudulently use Iraq reconstruction funds. I strongly encourage all U.S. Government agencies involved in oversight activities in Iraq to work together to aggressively pursue allegations of misuse and to penalize those who use U.S. taxpayer dollars for personal gain.

I look forward to working with my colleagues to ensure that Congress is providing adequate resources to ensure the oversight activities in Iraq are robust and effective. SIGIR has played a significant role in targeting abuse of the U.S. contracting system in Iraq, and I want to briefly touch on the potential for SIGIR to strengthen oversight activities in Afghanistan as well.

While Afghanistan receives significantly less funding than Iraq, we also need to ensure that taxpayer funding for reconstruction in Afghanistan is adequately distributed and accounted for. Today, as we examine the value of having strong oversight in Iraq, Mr. Chairman, we should also take into consideration the value it could add in Afghanistan. And I look forward to continue discussions with my colleagues and Mr. Bowen about a potentially expanded role for SIGIR.

Once again, I thank you for your important role and the work that you and your staff are doing to ensure that U.S. taxpayer dollars are being well spent.

Thank you so much, Mr. Chairman.

Chairman LEAHY. Thank you very much.

Gentlemen, would you—and, incidentally, before I swear you in, I should mention, Mr. Sabin, you did get your testimony here earlier than the incomplete document dump we got in connection with the mass firing of U.S. Attorneys, and obviously anybody is free to ask you any questions. I commend you on that. I know it has been busy down there at the Department of Justice. We are trying to enforce this rule. We have been ignored on the documents, but you were ahead of them, incomplete though they were.

Please stand, gentlemen, and raise your right hand. Do you solemnly swear that the testimony you will give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BOWEN. I do.

Mr. GIMBLE. I do.

Mr. SABIN. I do.

Chairman LEAHY. Let the record show that all were sworn in.

The first witness, Stuart Bowen, has served as the Special Inspector General for Iraq Reconstruction since October of 2004. He previously served as the Inspector General for the Coalition Provisional Authority in Iraq. Mr. Bowen has served President George W. Bush as Deputy Assistant to the President, Deputy Staff Secretary and Special Assistant to the President, and Associate Counsel. He has been a partner at the law firm of Patton Boggs, LLP. Of course, Mr. Boggs was a classmate of mine in law school. From 1992 to 1994, Mr. Bowen served as the Assistant Attorney General of Texas in administrative law litigation, holds a B.A. from the University of the South, attended Vanderbilt Law School, and received his J.D. from St. Mary's Law School.

Please go ahead, Mr. Bowen.

**STATEMENT OF STUART W. BOWEN, JR., SPECIAL INSPECTOR
GENERAL FOR IRAQ RECONSTRUCTION, ARLINGTON, VIR-
GINIA**

Mr. BOWEN. Thank you, Mr. Chairman.

Chairman Leahy, Ranking Member Specter, and members of the Committee, thank you for this opportunity to address you today on the role of the Special Inspector General for Iraq Reconstruction's oversight, and specifically investigations, in Iraq reconstruction. This hearing asks whether we can do more to combat fraud in Iraq, and before I answer that question, let me make two salient points to put my answer in context.

First of all, corruption within the Iraqi Government is a serious problem inhibiting all progress in Iraq. We have called it the "second insurgency" in our reports, and I returned last week from my 15th trip to Iraq and during that time met with the Commissioner on Public Integrity, the analogue to the FBI in Iraq, and the President of the Board of Supreme Audit, the analogue to the Government Accountability Office, and both of them, again, emphasized to me the problem of corruption across the government in virtually every ministry.

The CPI Commissioner told me that he has 2,000 cases involving \$8 billion of alleged corruption—

Chairman LEAHY. How many?

Mr. BOWEN. Two thousand cases involving \$8 billion of alleged corruption within the Iraq Government. The President of the Board of Supreme Audit has hundreds of audits going on and in virtually every case finds missing funds. Again, this is involving Iraqi money on the Iraqi side. My office has a working arrangement with the CPI, and we continue to support them where we come across evidence of potential Iraqi wrongdoing.

On the U.S. side, the incidence of corruption with respect to the U.S. reconstruction program that SIGIR has uncovered to date is a relatively small component of the overall investment. We have found egregious incidents of fraud. We have aggressively pursued them, and we have produced prosecutions and imprisonments. As you said, Mr. Chairman, fraud is unacceptable in Iraq. We must aggressively pursue it. And as Ranking Member Specter said, the best way to get attention is to put people in prison, and I agree. And that is my mission and has been from the start.

You summarized our overall effort at SIGIR, and that is, to account for how the taxpayers' money has been invested in Iraq. And we continue to do that aggressively.

In January, two individuals were sentenced to prison as a result of SIGIR investigations. In early February, indictments were announced of five more individuals as a result of SIGIR investigations. We have opened 300 cases. We have over 70 ongoing, and 28 of those cases are under prosecution at the Department of Justice. So we take seriously the mandate Congress has given us to audit, inspect, and investigate the use of taxpayer dollars in Iraq, and I am committed to maintaining a robust deterrent presence in Iraq as long as SIGIR exists.

Today, we have eight investigators on the ground in Iraq investigating fraud. It is the largest contingent of fraud investigators there. They travel the country pursuing leads and also work re-

gionally. To date, we have produced 12 quarterly reports, 82 audit reports, 80 on-site inspections, and as I said, over 300 investigations opened, yielding 10 arrests, 5 indictments, 5 convictions, and 2 imprisonments, and working on 79 live investigations. We have 19 investigators on staff, eight, as I said, in Iraq and the balance here in Arlington.

One of the most important aspects of our work is to develop a task force, working relationships with other agencies involved in oversight in Iraq, including my colleague, Mr. Gimble, and the Defense Criminal Investigative Service. Our 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's Immigration and Customs Enforcement office, the FBI, and the Department of State IG office. That task force was able to effectively pursue the Bloom-Stein conspiracy that my auditors uncovered in Hilla, Iraq—a very egregious kickback and bribery scheme involving over \$10 million in reconstruction funds that Philip Bloom, a contractor, and Robert Stein, the comptroller for that region, engineered to their own criminal ends. SPITFIRE continues and we continue to pursue a number of leads that arose from that case.

The other major initiative that SIGIR has begun is the International Contract Corruption Task Force. The Joint Operations Center for that task force is housed at SIGIR, and it is already producing effective cross-pollination of investigative leads and source development with respect to ongoing investigations, including some very significant ones that will be—that news of which will be forthcoming in the course of this year.

That task force includes the U.S. Army's Criminal Investigative Division Major Procurement Fraud Unit, the Defense Criminal Investigative Service, the FBI, and the Department of State's IG. And, again, a number of the Iraq Relief and Reconstruction Fund cases that we have ongoing are making rapid progress as a result of coordinated effort among the agencies assigned with jurisdiction.

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

And, finally, to coordinate efforts in oversight in Iraq, I formed shortly after I was appointed 3 years ago the Iraq Inspector General's Council, which brings together everyone in every corridor who has got oversight, and we deconflict and discuss what needs to get done to ensure, as you said, Mr. Chairman, that we account for how the taxpayer dollars are being invested in Iraq.

Thank you.

[The prepared statement of Mr. Bowen appears as a submission for the record.]

Chairman LEAHY. Thank you very much.

You have made how many trips over there, did you say?

Mr. BOWEN. Fifteen.

Chairman LEAHY. God bless you.

Mr. BOWEN. Thank you, sir.

Mr. Gimble became Acting Inspector General of the Department of Defense on September 10, 2005. Prior to his appointment, Mr. Gimble was Principal Deputy Inspector General, has held other key

positions in the Office of the Inspector General for the Department of Defense. He served with the U.S. Army as an infantry soldier in combat, was awarded the Bronze Star, the Purple Heart, the Combat Infantry Badge. He has a bachelor's of business administration from Lamar University, an MBA from the University of Texas at San Antonio.

Mr. Gimble, thank you for joining us today and please go ahead.

STATEMENT OF THOMAS F. GIMBLE, ACTING INSPECTOR GENERAL, DEPARTMENT OF DEFENSE, ARLINGTON, VIRGINIA

Mr. GIMBLE. Members of the Committee on the Judiciary, thank you for the opportunity to appear before the Committee today to talk about our oversight and investigation into contracting fraud in Iraq. The Global War on Terrorism is a top priority of our DoD IG office, and currently we have 150 personnel providing oversight of the \$463 billion in DoD supplemental funds appropriated to support our fight in the war on terrorism.

The Defense Criminal Investigative Service is the investigative arm of the DoD Inspector General and has been investigating DoD-related matters pertaining to the Iraqi theater, to include Kuwait, since the start of the war.

We continue to expand our in-theater presence. For example, in March of 2006, we established our first forward field site in Qatar, under the sponsorship of the Commander of the U.S. Central Command. We use the Qatar office as a hub to deploy teams into Iraq, Kuwait, and Afghanistan.

Recently, in coordination with the Commanding General of the Multinational Force-Iraq, we established our second forward deployed office, at Camp Victory. We currently have two investigators and eight auditors assigned there. In addition, we have two advisers in the International Zone and two additional investigators stationed in Kuwait.

The presence of the DCIS in the region has led to 83 investigations. Our investigations have 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. Currently DCIS is conducting 56 investigations involving war profiteering, contract fraud, and contract corruption in Iraq. Fifteen of those investigations are being conducted by four DCIS special agents that are in theater, and the remaining 41 are being conducted by 31 special agents that are housed in our U.S. and Germany offices.

The criminal activities being investigated in Iraq involve members of the U.S. Armed Forces, U.S. contractor personnel, as well as foreign personnel. For example, in January 2004, an investigation was initiated on information from the Defense Contract Audit Agency concerning allegations of kickbacks and gratuities that were solicited and/or received by Kellogg, Brown & Root (KBR) employees. KBR has also been alleged to have been overcharging for food and fuel.

The DCIS has also initiated a project to review paperwork associated with payments made by the U.S. Army paying agents in Iraq. Those payment records are currently stored at the Defense Finance

and Accounting Service, Rome, New York. This is expected to be a long-term effort. DCIS is working with the FBI and coordinating its activities with the U.S. Attorney's Office in the Northern District of New York. Also, our Deputy Inspector General for Auditing at DoD IG is conducting a concurrent review of the records, and several questionable transactions have been discovered and referred for further investigation.

Since the Global War on Terrorism began, DCIS has pursued criminal, civil, and administrative remedies against U.S. and foreign persons and companies. Ten of those investigations with adjudication fall within the prohibited activities of the War Profiteering Prevention Act of 2007.

These investigations have resulted in four Federal indictments, nine criminal informations, two Article 32 hearings under the Uniform Code of Military Justice. As a result of the investigations, eight U.S. persons and one foreign person were convicted and have a total of 14½ years in confinement and an additional 9 years of probation. Two individuals and one company were debarred from contracting with the U.S. Government; an additional 17 companies and personnel were suspended, and two contractors signing settlement agreements with the U.S. Government.

In all, about \$9.8 million was paid to the U.S. in restitution, plus \$322,000 was levied in fines and penalties, with another \$3,500 being forfeited.

We in the DoD IG are committed to remaining an active player in preventing and detecting fraud in the Iraqi theater. Again, thank you for the opportunity to appear before your Committee today.

[The prepared statement of Mr. Gimble appears as a submission for the record.]

Chairman LEAHY. Thank you, Mr. Gimble. On those sentences, what was the average? Of the ones who served time, what was the average sentence?

Mr. GIMBLE. Eight total people had a total of 14½ years, I think.

Chairman LEAHY. But that is 14 years for 8 or each one had 14 years?

Mr. GIMBLE. No. It was a total of 14½ years for all 8.

Chairman LEAHY. So that would be about a year and a half.

Mr. GIMBLE. About a year and a half, yes, sir.

Chairman LEAHY. Thank you. Over the last 3 years, I understand the Inspectors General here today have opened hundreds of investigations into fraud. I think there are currently more than 70 that are open and active that have been referred to the Department of Justice. I understand from the public records the Justice Department has brought eight criminal cases involving 25 people over the last 3 years. Is that correct?

Mr. BOWEN. I believe it is nine.

Chairman LEAHY. Nine, okay. And you have—

Mr. BOWEN. I should say nine SIGIR cases. I don't know about—
Chairman LEAHY. What?

Mr. BOWEN. Nine from our investigations.

Chairman LEAHY. Have they moved vigorously enough, aggressively enough, in the cases you have referred to them?

Mr. BOWEN. I think that they are moving very aggressively now, and I think over the last year we have made a lot of progress as the recent indictments and the convictions reveal. We have 28 cases that are being aggressively managed now. I have met with the Assistant Attorney General in the Criminal Division, Alice Fisher, and she has deployed the resources necessary to vigorously prosecute these cases.

Chairman LEAHY. Mr. Sabin, when would we expect the Justice Department to start prosecuting these investigations that have been referred to you? And I realize that it sometimes takes a while to put a case together for prosecution. You and I have both been there, but when can we expect this?

Mr. SABIN. Mr. Chairman, it is a priority area for the Department of Justice. We have devoted significant prosecutorial and investigative resources to it.

Chairman LEAHY. How many full-time prosecutors?

Mr. SABIN. We have 70 prosecutors, approximately, both in the civil and criminal arena, devoted throughout the Justice Department to these matters.

Chairman LEAHY. Full-time?

Mr. SABIN. I can't represent that it is full-time, sir, but working on these matters, so I would say approximately 70 is the number that the folks have provided.

Chairman LEAHY. How many are there full-time, this is their one duty?

Mr. SABIN. I can walk through specifics. We have folks in the Antitrust Division. We have individuals in the Criminal Division, both in the Asset Forfeiture and Money- Laundering Section, the Public Integrity Section, the Fraud Section, the—

Chairman LEAHY. Do you have enough people or do you need more?

Mr. SABIN. Well, I am not going to get into the specifics of resource allocation. I can talk to you about the manner in which we have tried to—

Chairman LEAHY. I am trying to help you out here. Do you need more—

Mr. SABIN. Right, but I cannot speak for our budgetary process with respect to—

Chairman LEAHY. When will the prosecutions start on the backlog?

Mr. SABIN. Sir, we believe that we are devoting significant resources to it. We believe that those prosecutions have to date occurred. We have had, as you have noted, 25 defendants charged. I believe it is 12 separate cases. That is on the criminal side.

We also have, of those 16 defendants that have been convicted on a wide variety of money laundering, major fraud against the Government, wire fraud, mail fraud, kickback, bulk cash smuggling. So we have tried to use the full resources that Congress—

Chairman LEAHY. These are the ones that have been convicted and are serving time? These are the ones that got a year and a half, approximately?

Mr. SABIN. Mr. Stein in the Stein and Bloom case, it is my understanding, received a 9-year sentence. Mr. Bloom I believe received a 4-year sentence.

Chairman LEAHY. Are they in the average then of the 14 months?

Mr. SABIN. I am not going to represent what the average or median is. We can work with you to get you those specific statistics.

Chairman LEAHY. Please, I would be very interested in that.

Mr. SABIN. We would be happy to provide that to you, sir.

Chairman LEAHY. Do you expect further prosecutions to be brought, say, in the next 3 months?

Mr. SABIN. I am not going to give a specific time frame, but absolutely we are devoting time and energy to make these criminal cases.

Chairman LEAHY. In your position, you would know if there is going to be, wouldn't you?

Mr. SABIN. I am not going to speculate as to when a particular indictment—

Chairman LEAHY. I am not asking you to speculate—

Mr. SABIN. —is going to occur.

Chairman LEAHY. This is an easy yes or no. In your position, would you know if prosecutions are about to be brought?

Mr. SABIN. Yes.

Chairman LEAHY. Do you know of any that are about to be brought in the next 3 months?

Mr. SABIN. Depending on factors, yes.

Chairman LEAHY. How many?

Mr. SABIN. I am not going to give you a specific answer to that, sir, but—

Chairman LEAHY. Why not?

Mr. SABIN. Because they are ongoing, operational endeavors with respect to those matters. It depends upon search warrants. It depends upon cooperators.

Chairman LEAHY. I understand.

Mr. SABIN. So we are working our way through both individuals and corporate entities to ensure that we are making—

Chairman LEAHY. By the end of the year, how many do you think might be brought?

Mr. SABIN. Sir, I am not going to commit to a specific number, but I can say here today that we are devoting the resources. It is a priority area, and we are going to make these cases. As you are aware—

Chairman LEAHY. Would it surprise you to think that perhaps Senator Specter and I may be asking you this question periodically as the year goes on?

Mr. SABIN. And, sir, I would be happy to come up— indeed, maybe I will have a chance to give an opening statement at that time. But—

Chairman LEAHY. Well, if you get the testimony in ahead of time under the rules, then you will. As I said, though, you were better than the incomplete—you came in more timely than the incomplete dump of other information in a different matter.

Mr. SABIN. I am not going to comment on that, but—

Chairman LEAHY. I do not—

Mr. SABIN. —I would tell you respect—

Chairman LEAHY. There are a lot of things you are not going to comment on. I understand. We will ask you though, Mr. Sabin, I

am not trying to play games here. I am worried that it has taken a long time on some of these. Mr. Bowen says there are as many as 2,000 investigations of fraud in Iraq.

Mr. SABIN. I believe that was referencing, though, if I am not mistaken, in Iraq as opposed to U.S. based.

Mr. BOWEN. Yes, those are Iraqi cases. We have 28 cases at the Department of Justice right now.

Chairman LEAHY. Am I correct in understanding there is about \$8 billion in missing funds, unaccounted for funds?

Mr. BOWEN. There are two figures here. One is the 2,000 cases that Judge Radhi told me about involve, according to his figures, about \$8 billion in Iraqi funds. You may be referring to our audit of 2 years ago, which looked at about \$8.8 billion in money that was provided by the CPA to the then-government of Iraq, and we found that the CPA did not have adequate controls to account for how that money was actually used.

Chairman LEAHY. When I was in law school at Georgetown, I used to enjoy coming up to enjoy coming up to watch the Senate, and I remember Everett Dirksen, who was the Republican leader at that time, his oft-repeated statement, you know, "A billion here and a billion there, after awhile we are talking about real money." He is right, of course.

You have, what, about 20 full-time fraud investigators in Iraq and Kuwait?

Mr. BOWEN. I have eight full-time in Iraq and another 12 here in Arlington.

Chairman LEAHY. Is that enough?

Mr. BOWEN. We can always do more to exercise oversight and investigate allegations of wrongdoing. One of the challenges in Iraq is putting together a case when there is no electronic trail to follow. There is no EFT, electronic funds transfer, in Iraq, which means you depend exclusively on individuals coming forward. And we are talking about individuals coming forward in an environment where their lives are threatened.

Chairman LEAHY. It is not too easy to come forward.

Mr. Gimble, do you have enough investigators?

Mr. GIMBLE. I am with Mr. Bowen. We can always use more. But we actually have 35 full-time equivalents working those issues now.

Chairman LEAHY. We will come back to that. Dr. Coburn has been waiting patiently here.

Senator Coburn, go ahead.

Senator COBURN. Mr. Chairman, all of these gentlemen, save Mr. Sabin, have been before the Federal Financial Subcommittee of Homeland Security, and all these questions have been addressed, and we have had hearings exactly like this. And so I do not have any questions. I came to hear the testimony today.

Chairman LEAHY. I appreciate that. As always, I appreciate having you here.

Senator Cardin?

Senator CARDIN. Thank you, Mr. Chairman.

This is somewhat frustrating to all of us because it is a lot of money that the taxpayers of the United States have spent in an ef-

fort to try to help rebuild Iraq. So we are talking about billions of dollars.

How much money have we recovered from those who have committed wrongdoings as contractors in Iraq with U.S. dollars? How much has actually been recovered to date?

Mr. BOWEN. SIGIR has recovered about \$10 million in cash and illegal property, contraband.

Mr. SABIN. In terms of the Department of Justice, on the civil side my understanding is that it is \$5.8 million resulting from two civil settlements. And then there is on the criminal side forfeiture and restitution. For example, the Bloom-Stein case, each of the two lead defendants were ordered both forfeiture and restitution \$3.6 million jointly and severally, as well as additional matters out of the LOGCAP Working Group task force. In the Central District of Illinois, there is a matter that was \$350,000, et cetera.

So pull that all together, I would say maybe approximately \$8 million, but I can get you the specific breakdown, Senator Cardin.

Senator CARDIN. Well, I think that would be helpful. The estimates that have been used indicate that the amount of fraud far exceeds those dollars amounts, and I really do applaud your efforts. I know it is difficult. I know it is not easy. I cannot think of a much worse conduct than a contractor taking advantage of a war effort. We have brave men and women who are serving in our armed forces, and you would think that the business community that is involved in Iraq would understand the sacrifices that are being made and, if anything, would be looking at ways to help the mission rather than making a profit unjustifiably through corruption.

I am not sure I totally understand the difference in the—I understand the Iraqi corruption issues, but does this involve the U.S. funding? Is there any U.S. dollars involved in the contracts that the Iraqis are investigating?

Mr. BOWEN. No. Those contracts involve Iraqi funds, according to Judge Radhi's report to me.

Senator CARDIN. So there are no U.S. dollars involved, no funds made available through our country to Iraq that are involved in these issues?

Mr. BOWEN. Not in the cases he has reported to me. I have a memorandum of agreement with him wherein if he comes across cases involving the misappropriation of U.S. dollars, he will refer that information to me; and, likewise, if I come across cases involving Iraqi money, I refer them to him.

Senator CARDIN. I could tell you that from the press accounts and from the information that has been made available to our Committee, there is a significant amount of concerns. I appreciate the fact that investigations are ongoing. It just does not appear that we are being as aggressive as we need to with certain business entities that are extremely active in Iraq, and the reports indicate that U.S. taxpayers have been overcharged. There are also reports that large sums of monies have gone unreported. We do not know where they are. And yet there—am I wrong on that?

Mr. BOWEN. Senator Cardin, you are right, there has been a problem with waste, as our audits and inspections have documented. However, accumulating evidence in theater up to the standard of review required in criminal cases has been a challenge.

That is why I have pushed my office to pursue other alternative punitive measures such as debarments and suspensions. And that is something that we are going to aggressively pursue this year.

We have had 14 companies and individuals suspended and another 12 that are—8 that have been debarred, another 12 pending debarments. I think, though, this is a fruitful path to pursue in order to hold accountable those who have taken advantage of the situation in situations where we cannot come up with sufficient evidence to convict them of criminal wrongdoing.

Senator CARDIN. And Senator Leahy has suggested—yes?

Mr. SABIN. I would agree with that. I think we are trying to use the full tools available, so you would have the suspension and debarment procedure that Mr. Bowen referred to. We have brought corporate cases against business entities in the civil realm on two public instances, and we are looking, consistent with the fundamental principles of Federal prosecution relating to corporate entities to explore corporate charges as well in the criminal context.

Senator CARDIN. And I would just call to your attention Senator Leahy's legislation, because I do think it makes it clear about the particular focus that the United States wants to have on profiteers in our war efforts. That to me takes it to a different level, and those who participate need to understand that this is more than an 18-month sentence. This is someone who has committed a horrible act. When we have our soldiers that we ask every day to take on the challenges, including their own safety, the least that we can expect from contractors is that they will do their job and will not try to take advantage of the circumstances.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

You know, we do not have a law that actually makes war profiteering a specific Federal crime. This bill would do so. I direct this to you, Mr. Sabin. It would also extend extraterritorial jurisdiction to the full extent that we can under both U.S. law and obviously our treaty obligations.

Now, should we have such a clear, precise piece of legislation?

Mr. SABIN. Fair question, sir. We share common ground in this. We want to make sure that we have all the appropriate tools and authorities to address the war profiteering, to reduce fraud, and protect the public. I, in fact, commend your leadership and attention to this important area.

We have as part of our National Procurement Fraud Task Force a working group made up of Inspector Generals throughout the interagency process reviewing appropriate legislative and regulatory mechanisms that may be appropriate, not only on the criminal side but on the civil side.

Chairman LEAHY. I do not want to get too far off my question. You said that you want all the tools you can. Is this a tool that you could use?

Mr. SABIN. The Department has not sent forth particular views on your proposed legislation, but—

Chairman LEAHY. Either for or against it.

Mr. SABIN. There is not a specific views letter on it, but I can work with the Committee, our staff can work with your staff with respect to some of the technical concerns that we have.

For example, the willfulness that is drafted in the statute would increase the burden of proof, the mens rea requirement, as opposed to the normal mail and wire fraud statutes. So it would make it harder to bring these cases.

Chairman LEAHY. What about the extraterritorial jurisdiction?

Mr. SABIN. There is a logistical and a jurisdictional component to extraterritorial jurisdiction. For example—

Chairman LEAHY. Let's put aside the logistical one for a moment. What about the—

Mr. SABIN. The jurisdictional, if it is not explicitly stated in a congressional criminal law, then you can in some instances based upon five principles of extraterritorial jurisdiction under international law, read into it an extraterritorial component.

Chairman LEAHY. Is this specific enough?

Mr. SABIN. Well, yours is specific. The point is it may have unintended consequences. For example, the wire fraud statute has been construed to have extraterritorial application—

Chairman LEAHY. In what way?

Mr. SABIN. You can bring a wire fraud charge, a violation of Title 18 United States Code Section 1343, presently even though extraterritorial jurisdiction is not explicitly stated in the congressional enactment. So we have time-tested fraud statutes. So the fact that you have asserted specific extraterritorial jurisdiction in the proposed War Profiteering Act may have consequences, for example, in the securities fraud realm, in the bank fraud context, in the wire fraud and mail fraud context. So that is what I am suggesting, that we can work through these technical issues.

As an explicit statement of extraterritorial jurisdiction, the impact upon the protective principle, the ability for the United States interest in terms of its public fisc, its monies, its documents—

Chairman LEAHY. Well, let me talk about under the current laws. How many of these referrals that you have had, how many has the Department of Justice joined in cases?

Mr. SABIN. All the referrals that SIGIR has made to us we have worked with them to review and explore criminal or civil potential.

Chairman LEAHY. You have joined every one of those cases?

Mr. SABIN. I believe through the International Contract Corruption Task Force, as an operational matter, we are working with SIGIR and a host of other entities. I am not going to promise that criminal charges are going to be brought.

Chairman LEAHY. Okay. Well, maybe I should ask you,

Mr. Bowen: How many matters alleging fraud have been referred to the Justice Department?

Mr. BOWEN. Total since inception, I am going to have to get you that number. Currently, we have 28. Five are civil and the balance are criminal. But the total number since inception is upwards towards 40.

Chairman LEAHY. And how many has the Justice Department joined?

Mr. BOWEN. They have acted or are considering action on everything that we have presented. The turndown rate of our cases has been low.

Chairman LEAHY. Thank you.

I am not sure, Mr. Sabin, whether you are saying this is or is not a tool that a prosecutor can have in their arsenal, this War Profiteering Act. I realize the tools you have now. I always liked the idea, if I had a criminal matter coming before me when I was a prosecutor, that I could look down and find about half a dozen statutes that applied and pick the one that I thought I had the best chance of winning on.

Mr. SABIN. Fair point, sir. And we want to make sure that we have the tools that we need. So if—but we have not had any obstacles to bringing cases because, remember, these cases have both an international and domestic component. So that would be a territorial application of U.S. law and not needing to go into an extraterritorial aspect if there are facts and incidents that are occurring in the continental United States. So you do not have to resort to extraterritorial jurisdiction.

Chairman LEAHY. How much have you recovered on these cost-plus contracts?

Mr. SABIN. I do not have that specific answer, but we can absolutely get that to you, sir.

Chairman LEAHY. Please. Have some of these cost-plus contracts been used to commit fraud?

Mr. SABIN. I believe the answer is yes, but, again, we can provide the specifics that are in the public realm. We would be happy to work with the Committee to provide that.

Chairman LEAHY. And we have a lot of cash contracts. Still, it boggles my mind—maybe it is being a frugal Vermonter where we like to know where the money goes, but seeing these large transport planes coming in with these huge piles of cash that are passed out when we were first there. Are we still paying out war contracts in cash?

Mr. BOWEN. Yes, contracts are commonly paid out in cash when Iraqi firms are involved in direct contracting in Iraq today.

Chairman LEAHY. And do I understand from your earlier testimony that that exacerbates the problem of following up on it?

Mr. BOWEN. It does. When I arrived in Iraq on my first trip 3 years ago and saw the amount of cash that was simply moving out of the pallets, I recognized we had an oversight issue of enormous proportion. And, indeed, that was one of the matters addressed in the audit I referred to earlier. Our other audits also looked at the management of cash in Iraq during CPA and found the controls wanting. Those controls have improved over time, and I might add that one of the important initiatives the SIGIR has engaged in over the last 18 months is our Lessons Learned program. We have presented those reports—Senator Coburn referred to them earlier—before the Senate Governmental Affairs and Homeland Security Committee, and in the Contracting Lessons Learned report, I highlighted the importance for Congress to review the cost-plus contract system. I do think that waste has been the larger issue in Iraq, and the place where that has happened is within the cost-plus arena and the failure to definitize costs as required over time.

Chairman LEAHY. Thank you.

Senator Coburn, I know you have had these matters before your other Committee. Did you have anything further you wanted to add?

Senator COBURN. Just a comment, and it is really political in nature. You know, talking about war profiteering, we are going to have a supplemental on the floor, and it is going to have \$21 billion worth of war profiteering on it by the Senate, things added to it that do not have anything to do with the war. And so I think it is good that we look at this and then we look at ourselves as we look at that supplemental.

Chairman LEAHY. Thank you.

I see nobody else here. We may have some questions for the record. Mr. Bowen, Mr. Gimble, Mr. Sabin. Is it Sabin?

Mr. SABIN. Yes, sir.

Chairman LEAHY. We have a number of Sabins in Montpelier, Vermont, where I was born. That is how they pronounce it also.

Thank you all for being here. I do appreciate it.

Mr. BOWEN. Thank you, Mr. Chairman.

[Whereupon, at 10:33 a.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS



SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION

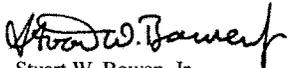
May 14, 2007

Senator Patrick Leahy
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find the Special Inspector General for Iraq Reconstruction's responses to questions for the record from the Committee's March 20 hearing on "Combating War Profiteering: Are We Doing Enough to Investigate and Prosecute Contracting Fraud and Abuse in Iraq?" We trust that these responses answer your questions and address the interests of the members of the committee.

If you or members of your staff have any further questions please contact Mrs. Marthena Cowart, Assistant Inspector General for Congressional Affairs at 703-604-0368 or by e-mail at Marthena.cowart@sigir.mil.


Stuart W. Bowen, Jr.
Inspector General

WRITTEN QUESTIONS OF CHAIRMAN PATRICK LEAHY TO
SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION STUART BOWEN
COMBATING WAR PROFITEERING HEARING
MARCH 20, 2007

Investigations of Fraud in Iraq

In your testimony to the Committee, you disclosed that Iraqi authorities are conducting as many as 2,000 ongoing fraud investigations, and those investigations involve about \$8 billion in missing funds (see SIGIR Testimony, page 1). At the hearing, you stated that those investigations did not involve any U.S. funds, and, as a result, your office has not participated in those investigations.

Do any of those ongoing investigations relate to funds disbursed by the Coalition Provisional Authority (CPA), which was administered by U.S. officials and expended U.S. funds, as well as money seized from the Iraqi government?

Response: To the best of our knowledge, the ongoing investigations by anti-corruption entities of the Iraqi government primarily involve the use of Iraqi funds. Some of those funds were administered by CPA officials in the period prior to June 2004. There is significantly more accountability for U.S. funds administered by CPA officials given that they fell under the Federal Acquisition Regulation. It is important to clarify, however, that the \$8.8 billion in Development Fund of Iraq funds discussed in the SIGIR testimony and the SIGIR audit was not described as "missing". Rather, the SIGIR audit pointed out that CPA, then responsible for the DFI funds, did not adequately account for, or indeed follow its own processes for, funds it passed to Iraqi ministries.

If yes, how many cases, and why has your office declined to participate in those fraud investigations related to the CPA?

Response: Several of our open cases relate to allegations of wrongdoing while the CPA was in charge. We have not declined participation in any fraud investigations relating to the CPA. Where Iraqi authorities are investigating wrongdoing on the part of Iraqi officials during that same time-frame, we are available to assist, however SIGIR does not have jurisdiction on such cases.

Do any of those ongoing investigations relate to false statements made to U.S. officials working for the CPA or any other government entity?

Response: SIGIR cannot comment on open investigations.

If yes, how many cases, and why has your office declined to participate in false statement investigations related to U.S. officials?

Response: See above.

To your knowledge, have you, your staff, or any other U.S. official(s) reviewed those investigations to determine if they contain allegations of possible violations of U.S. laws?

Response: All investigative information brought to SIGIR is carefully reviewed. Any potential violation of U.S. laws is aggressively pursued.

If not, why not?

Response: See above.

What steps have you taken to make certain that none of those 2,000 investigations involve possible violations of U.S. law?

Response: Our involvement in Iraqi investigations is limited to the information that is shared by Iraqi authorities. To the extent that we are coordinating with the Commission on Public Integrity (CPI) on any investigations, if any indications of wrongdoing are uncovered involving a U.S. citizen or U.S. laws, our office and our partner U.S. investigative agencies perform due diligence to ensure that any potential crimes are aggressively pursued.

Have you received any guidance from the Department of Justice (“DoJ”) related to your decision not to pursue those 2,000 investigations, and, if so, from what component at DoJ and what was that guidance? Please also provide any documents reflecting that guidance.

Response: As indicated above, we would aggressively pursue any evidence of wrongdoing by U.S. citizens or under U.S. law. We maintain a constant dialogue with the Department of Justice on the whole range of investigative issues in Iraq. No specific direction was sought or provided on these cases because, as I stated in my testimony, these are Iraqi cases against Iraqi officials involving Iraqi funds. There is no jurisdiction for either SIGIR or DOJ. Additionally, it must be noted that while Judge Radhi al Radhi, the Commissioner of the CPI, has orally indicated to SIGIR that these investigations are ongoing, the quality of the investigations is difficult to determine given the nascent state of anti-corruption and investigative bodies in Iraq. The Department of Justice is also well aware of the limitations of CPI’s capacity, as they currently manage several training programs for the CPI.

Declinations of Investigations

In your testimony and public reports, you indicated that your office has opened more than 300 criminal and civil investigations into fraud, waste, and abuse in Iraq over the past three years, and yet more than 200 investigations have been closed or declined and fewer than 30 investigations are being prosecuted by DoJ (see SIGIR Testimony, page 2).

Have you consulted with DoJ prior to closing or declining any of those investigations?

Response: Yes. Our office works closely with both the Criminal and Civil Divisions and other appropriate offices within the main Department of Justice to ensure appropriate review of all cases prior and after closure. We do not decline any cases. All cases which meet the appropriate criteria are referred to the Department of Justice.

If yes, what component at DoJ did you consult with, how many cases did DoJ review, and how many cases did DoJ recommend declining or closing?

Response: The components at DOJ we have consulted with include the Criminal Division: Antitrust Section, Fraud Section, Public Integrity Section, Money laundering Section, Civil Division – Commercial Litigation Section among others and United States Attorneys office in Washington and Eastern District of Virginia. We have had discussions on practically every investigative matter with DOJ. However, some investigations were closed administratively because of lack of evidence of a criminal wrongdoing, or lack of prosecutorial merit.

Were any of those investigations closed or declined for lack of jurisdiction or on other purely legal grounds?

Response: No, DOJ did not decline any investigations for lack of jurisdiction. Investigations that were outside the scope of SIGIR authority were referred to the appropriate law enforcement agency(s) that had jurisdiction.

If yes, how many and what were the legal grounds?

Response: n/a

In the cases where you consulted with DoJ, did DoJ provide you or your staff with any guidance concerning your lack of jurisdiction to investigate or prosecute possible violations of U.S. law?

Response: No. SIGIR investigative staff knows our jurisdictional boundaries as set forth by the United States Congress. Therefore, DOJ did not have to provide guidance on this issue.

If yes, what was that guidance? Please also provide any documents reflecting that guidance.

Response: Please see above.

Pending DoJ Prosecutions of SIGIR Investigations

In your testimony, you indicated that your office currently has 79 open, active investigations involving one or more targets. You also indicated that 23 cases have been referred to DoJ for

prosecution (see SIGIR Testimony, page 2). Yet, according to public records, DoJ has only brought criminal charges in the Bloom/Stein conspiracy case (8 defendants) and the Salam prosecution (1 defendant).

How many of your criminal investigations remain pending at DoJ?

Response: SIGIR currently has a total of 23 investigations pending at DOJ. Not including the Bloom/Stein investigations and cases related to them, DOJ has 16 pending cases (11 criminal and 5 civil).

How many of your civil investigations remain pending at DoJ?

Response: Please see above response.

How long have those investigations remained pending?

Response: Varying dates from March 2005 to as recent as February 2007, based upon the complexity of the cases. On a daily basis, we are in touch with the DOJ attorneys and we have excellent cooperation with them.

Do you expect DoJ to file charges or complaints in these pending cases, and if so, in how many cases?

Response: We have no reason to believe that any of our non-declined cases will not be prosecuted. Until the investigations are completed, no one can predict the resulting charges. In every case, SIGIR works toward criminal or civil resolution with partner agencies and DOJ.

Referral of Investigations to DoJ/National Procurement Task Force:

Prior to October 2006, the Department of Justice had no unit specifically responsible for prosecution of fraud in Iraq. Before creating the National Procurement Fraud Task Force, it was not clear to whom you referred your investigations, and who made the decisions on what cases were to proceed, or not.

Prior to October 2006, what unit at DoJ was responsible for reviewing your investigations, and what DoJ unit made decisions about what cases were to proceed?

Response: As set forth in a prior response, various components at DOJ or US Attorneys offices were consulted on SIGIR investigations. We generally work our cases with the Washington D.C. or Eastern Virginia Districts, and with main Justice.

Did you make any request to DoJ that a unit be created to handle your cases more effectively, and, if so, when was that request made?

Response: We maintain a constructive partnership with DOJ and are constantly working together to improve effectiveness in the handling of cases. Numerous meetings have been held with various Justice Department officials dating back to 2005 and all of those meetings have contributed to the current positive working relationship between our organizations.

Has any official at DoJ given you or your staff any explanation for why no such unit was created before October 2006?

Response: No, we have not asked that question.

Investigations by DoD IG and Other Agencies

At the hearing, the DoD IG testified that his office has initiated 83 investigations into contracting fraud and abuse in Iraq, including 56 criminal investigations by the Defense Criminal Investigative Service ("DCIS") (see DoD IG Testimony, page 4). It is unclear whether these investigations are different or the same as investigations conducted by the SIGIR.

To your knowledge, are any of these DoD IG investigations the same as the SIGIR investigations?

Response: SIGIR coordinates cases with the DCIS on a regular basis. There are several cases worked jointly with DCIS and many cases being worked jointly with Army CID Major Procurement Fraud.

If yes, could you clarify how many of the cases are the same (we will be asking the same questions of the DoD IG).

Response: SIGIR strives to work jointly with a partner agency on every investigation. SIGIR is aware that at some future date, SIGIR will sunset as an organization and, when that occurs, through our partnerships, SIGIR can hand off these investigations to these agencies and feel certain that the investigations will be carried out to a logical conclusion and in a timely manner.

Investigative Resources in Iraq

In your testimony, you indicated that there were a total of about 20 full-time fraud investigators in Iraq and Kuwait combined: 8 from your office, 8 from Army Criminal Investigative Division ("Army CID"), 3 from the Department of Defense Inspector General ("DoD IG"), and 1 from the USAID Inspector General (see SIGIR Written Testimony, page 3). If and when the SIGIR no

longer has responsibility for oversight in Iraq, about 40 percent of the investigative resources will be removed from Iraq and Kuwait.

What, if any, plans are in place to ensure your ongoing investigations are continued and full oversight of the reconstruction process remains?

Response: SIGIR is a temporary organization. For that reason, we have developed an investigative strategy that involves many other federal investigative agencies in our work to ensure seamless transition of cases upon our dissolution. SIGIR maintains a Closure and Transition plan that outlines the specifics of that turnover. More importantly, all cases currently handled by SIGIR have at least one other investigative body that is also familiar with each case.

Do you believe the current number of fraud investigators in Iraq and Kuwait is sufficient to ensure all fraud allegations and other potential violations of U.S. laws are appropriately investigated?

Response: The number of investigators in Iraq has increased over the past year as various other federal organizations apply their resources. Judicious use of in-country investigators and temporary duty assignments to Iraq and the region are bolstering investigative capability.

You also indicated that the SIGIR had developed a working relationship with the Federal Bureau of Investigation (FBI) to develop and follow leads in the United States, and to assist in your investigations.

Are you aware of any full-time fraud investigators from the FBI working in Iraq or Kuwait?

Response: As reported in our quarterly report, the FBI has a Legal Attaché in Baghdad and one fraud investigator in Baghdad and one fraud investigator in Kuwait.

Would additional investigators from the FBI assist you in your mission in Iraq and Kuwait?

Response: The FBI is assessing its role and will make that determination. However, SIGIR investigators are working with the FBI CONUS and our other partner agencies.

Paying Contracts in Cash

You have reported that the CPA decided to pay for contracts, services, and other obligations using billions in cash brought from the United States to Iraq. You have also found there was poor accountability for how that cash was disbursed to Iraqis and to contractors. At times, former and current government officials have tried to excuse paying out these cash disbursements as necessary where the banking system in Iraq was limited.

Do you agree with that assessment? Was it necessary for the CPA to pay out billions in cash for these contracts and obligations?

Response: For the first two years, the banking system in Iraq was non-existent. The only way to pay for work within the country was in cash. While not the preferred method of transacting business, it is fair to say that there were not other options.

Were there alternatives to paying the Iraqis in cash, and, if so, what were they?

Response: While this might be answered more fully by the Department of the Treasury, in our experience, cash payments were the only way of expeditiously paying for services during the CPA period.

Did using cash create risks and incentives for fraud and abuse in Iraq?

Response: Absolutely. The use of cash dramatically increased the risks and incentives for fraud and abuse in Iraq – which is why it is important that fund managers utilize compensating controls to ensure accountability.

There continue to be concerns that some contracts in Iraq are still paid in cash, even though this creates risks and incentives for fraud and abuse.

Response: To our knowledge, U.S. funds have moved away from cash transactions. The banking system of Iraq – specifically the Central Bank of Iraq – has a system that can handle checks. Limited use of electronic transfers is beginning to occur.

To what extent have you found that reconstruction or military contracts continue to be paid in cash?

Response: The U.S. Army Corps of Engineers Finance Center has processed cash payments through DFAS-Rome, NY, for IRRF-funded construction projects for the Gulf Region Division (GRD). GRD pays contractors in cash and also issues Treasury checks to contractors that are converted at the Finance Center in cash. In response to an earlier inquiry by SIGIR, the Finance Center provided information on about \$45.8 million in cash payments made with IRRF that were processed from October 2006 through mid-March 2007. SIGIR has not verified this information.

If so, does this ongoing practice create risks and incentives for fraud?

Response: Use of cash does create risks and incentives for fraud, which is why the use of strong internal controls (and compensating controls when that is not available) is important and can be utilized by fund managers to ensure accountability.

Do you believe this practice should be discontinued?

Response: Yes, unless cash transactions are the only way to accomplish the mission, in which case compensating internal controls should be put in place and utilized.

Are there additional safeguards that can be used to avoid the risks and incentives for fraud in cash contracts?

Response: According to GAO's "Internal Control Management and Evaluation Tool" publication (GAO-01-1008G, August 2001), segregation of duties and responsibilities is an internal control used to help deter fraud. Specific internal controls related to reducing the risk of error, waste, or fraud for cash assets include:

- No one individual is allowed to control all key aspects of a transaction or event.

- Responsibilities and duties involving transactions and events are separated among different employees with respect to authorization, approval, processing and recording, making payments or receiving funds, review and auditing, and the custodial functions and handling of related assets.

- Duties are assigned systematically to a number of individuals to ensure that effective checks and balances exist.

- Where feasible, no one individual is allowed to work alone with cash, negotiable securities, or other highly vulnerable assets.

The DoD IG indicated that his agency is attempting to audit and investigate the use of cash contracts by reviewing documentation for the disbursements at a defense facility in Rome, N.Y. (see DoD IG Testimony, page 6).

Are you participating in this review?

Response: SIGIR is coordinating with DOD IG but is not participating in the actual audit.

If so, what is your participation, and what, if any, preliminary findings have you made from participating in this review of cash disbursements?

Response: SIGIR has done cash counts of our own and found controls were in place, but improvements could be made in documenting project and disbursement evidence. Our reports on these cash counts are available under AUDITS at www.sigir.mil. (See Audits 06-024, 06-012, 06-008, 05-006)

**Questions For The Record Submitted By Senator Edward M. Kennedy To The
Honorable Stuart W. Bowen, Jr., Special Inspector General for Iraq Reconstruction
March 27, 2007**

The Department of Defense, through the Joint Contracting Command - Iraq/Afghanistan (JCC-I/A), used indefinite delivery/indefinite quantity (ID/IQ) contracts to purchase pistols for Iraq. The Army's Tank and Automotive Command (TACOM) used full and open competition to procure pistols to supply the Afghans. The delivery orders under the ID/IQ contracts have all been "name brand only" contracts where the military has specified the manufacturer and model number of the weapon. In contrast, TACOM has specified nearly identical requirements and then used full and open competition to buy pistols for Afghanistan. The JCC-I/A has purchased thousands of Austrian manufactured Glock pistols for Iraq while the full and open competition used for Afghanistan has resulted in Smith and Wesson, a domestic manufacturer based in Springfield, Massachusetts winning the competitively awarded contracts.

In April 2006, the JCC-I/A issued a SOIC source solicitation for Glock pistols. In response to a letter from the Chief Executive Officer of a domestic manufacturer requesting full and open competition, the contracting officer wrote in an email dated May 11, 2006 that "[the Glock pistol is the weapon of choice for the Iraqi Security Forces and is the requirement to be sourced".

Following receipt of the email from the contracting officer, a domestic manufacturer of pistols, protested to the Government Accountability Office (GAO). The Army requested that the protest be considered in an express manner in accordance with 4 C.F.R.2 1.10 due to the ongoing Iraq War. On May 31, 2006, the contracting officer canceled the solicitation for the handguns. In a letter dated August 8, 2006, Deputy Assistant Secretary of the Army Ballard wrote that the solicitation was cancelled because of the misspecification of the model by the Iraqi Security Ministries (the initial solicitation was for the Glock 17 model, but should have been for the Glock 19 model). The letter further explained that JCC-I/A decided to solicit the Glocks from already existing ID/IQ contractors who had previously gone through the full and open competition. A company in based in Georgia eventually won the order to supply 29,000 Austrian made Glock 19 pistols to Iraqi Police Forces.

Please provide a complete and detailed explanation of the purchase of these 29,000 Glock pistols for the Iraqi Security Ministry. Please clarify why the Army is taking the position that the initial solicitation of the Glock 17 model as the "weapon of choice" was later characterized as a "mistake." Did the acquisition of these pistols fully comply with the provisions of the Buy American Act and other domestic preference laws, since the contract went to a foreign manufacturer while an American company was prevented from bidding American made products? Did the military fully justify and

obtain all necessary approvals for the “brand name only” acquisition prior to purchasing the weapons?

Response: SIGIR has not produced any audits or inspections that specifically look at the selection of Glock brand weapons for the Iraqi Security Forces (ISF), or at the question posed above. In the course of our audit of ISF Weapons (SIGIR 06-033), SIGIR identified the Glock 9mm semiautomatic pistol as constituting the largest procurement of non-Warsaw Pact Weapons. 138,813 pistols were purchased, primarily on 6 of the 19 contracts within the Iraq Relief and Reconstruction Fund, with 2 contracts accounting for 85% of the purchases. In our audit, we noted that the Glock 9mm pistol was the weapon selected by MNSTC-I as the sidearm for the Iraqi police force and was widely used by police departments within the United States because of its safety and reliability features. Later in the same report, we noted that “in spite of the harsh environment in Iraq that exposes weapons to dust, sand and high temperatures, we found no reported problems with the quality of any of the weapon types, including the more prevalent AK-47 assault rifle and Glock 9mm pistol. The latter weapons are widely recognized as weapons of proven design and reliability.” For more detail on the selection and justification, we would refer you to MNSTC-I.

**Senator Arlen Specter: Questions for Special Inspector General for Iraq Reconstruction
Stuart W. Bowen, Jr.**

1. You have had the opportunity to *review* Senator Leahy's legislation on war profiteering.

Do you support it?

Response: SIGIR is a strong proponent of any legislation that further criminalizes fraud waste or abuse of funds in Iraq. The War Profiteering Prevention Act of 2007 possesses some attractive elements that could assist in such efforts. With some refinement the proposed legislation could be a helpful prosecutorial tool.

Why, or why not?

Response: Please see above.

In a previous hearing, you stated that the cost-plus contract system, in which the government guarantees contractors that it will pay their costs in exchange for them working in war torn Iraq, was a problem. Is the government correcting this problem?

Response: SIGIR is aware of multiple efforts ongoing to re-examine the Federal Acquisition Regulation to improve its usage during contingency operations.

The director of the Defense Contract Audit Agency has testified that there are more than \$10 billion in questioned and unsupported costs relating to Iraq. The GAO has estimated that there are \$3.5 billion in questionable costs. In a prior hearing, you chose not to give Congress your own estimate. Are you willing to do so now?

Response: SIGIR can only provide estimates based on work performed. To date, SIGIR has not performed a comprehensive review of questioned costs. We would direct you to DCAA for that answer. GAO estimates, as well as ours, are based on DCAA information. SIGIR is currently looking at where the money went in a series of audits. The first audit will be published this month on Bechtel. We have audits underway on Parsons and Dyncorp.

There are a number of factors that have run up costs in the contracting system in Iraq, including: 1) fraud, 2) the type of contract, 3) security concerns, 4) a cash exclusive economy, and 5) the management of the contract system.

Which of these is most problematic for us?

Response: In the case of US funded contracts, fraud has not been a significant factor. To a great extent, the type of contract has been driven by risk. We have found challenges in

the management of the contract system and presented our findings and recommendations in many of our audits to date.

Can you rank these in order of importance?

Response:

- 1) Contract Management/Prime Vendor Oversight
- 2) Security
- 3) Lack of true overall plans
- 4) Lack of performance metrics

Mr. Bowen your original appointment was as the Coalition Provisional Authority Inspector General in January, 2004, as required by the November, 2003 appropriations supplemental of over \$18 Billion in US Taxpayer money to help rebuild Iraq.

Prior to your appointment, did the Coalition Provisional Authority have an Inspector General?

Response: While not officially, the CPA did have an individual who functioned more along the lines of a military Inspector General. He did not have the benefit of a budget or staff to perform the full range of IG work.

What is your appraisal of the Inspector General activity at the CPA prior to your appointment?

Response: Given the mandate and budget, the Inspector General activity during the CPA was limited.

Investigations of Fraud in Iraq

1. In testimony to the Judiciary Committee, the Special Inspector General for Iraq Reconstruction ("SIGIR") indicated that Iraqi authorities are conducting as many as 2,000 ongoing fraud investigations, and those investigations involve about \$8 billion in missing funds (see SIGIR Testimony, page 1).

a) Do any of those ongoing investigations relate to funds disbursed by the Department of Defense (DoD), any of its components, or the Coalition Provisional Authority (CPA)? If yes, how many cases, and has your office participated in those fraud investigations?

The DoD OIG does not have direct access to information related to individual investigations that are being conducted by the Iraqi authorities.

b) Do any of those investigations relate to false statements made to U.S. officials working for the DoD, any of its components, or the CPA? If yes, how many cases, and has your office participated in those false statement investigations related to U.S. officials?

Please see response above.

c) To your knowledge, have you, your staff or any other U.S. official(s) reviewed those investigations to determine if they contain allegations of possible violations of U.S. laws? If not, why not?

The DoD OIG has not reviewed those investigations to determine if they contain allegations of possible violations of U.S. law. The SIGIR has a working arrangement with the Iraqi Commissioner on Public Integrity (CPI) and coordinates with CPI on investigations conducted by Iraqi authorities. It is my understanding that because the cases focus on corruption within the Iraqi Government and involve Iraqi money, the potential for violations of U.S. law is minimal.

d) What steps have you taken to make certain that none of those 2,000 investigations involve possible violations of U.S. law?

Please see response above.

e) Have you received any guidance from the Department of Justice ("DoJ") related to your decision not to pursue those 2,000 investigations, and, if so, from what component at DoJ and what was that guidance?

The DoJ has not provided the DoD OIG with guidance with regard to pursuing the referenced investigations.

Active and Closed Investigations

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2. In your testimony, you indicated that your office has led 83 investigations into contracting fraud related to the Global War on Terror, and specifically the Defense Criminal Investigative Service (DCIS) has conducted 56 investigations related to war profiteering, contracting fraud, or contract corruption (see DoD 10 Testimony, page 4).

a) Could you identify how many of these cases are active and pending, and how many have been declined or closed?

In late 2006, DCIS implemented a method to better track GWOT investigations by adding a special interest "GWOT" indicator in the agency's case management system. Currently, DCIS has 56 active GWOT investigations. A thorough review of the agency's case management system and case files must be conducted to determine the number of closed investigations involving procurement fraud in Iraq, as no automated tracking method for reviewing these unique cases was previously in place. DCIS has initiated a review of its closed cases in order to provide an accurate assessment. From September 2006 to March 2007, DCIS closed five GWOT investigations.

b) Have you consulted with DoJ prior to closing or declining any of these investigations? If yes, what component at DoJ did you consult with, how many cases did DoJ review, and how many cases did DoJ recommend declining or closing?

Of the five aforementioned GWOT cases, two cases were presented to the Department of Justice and were declined. One case was handled by a Staff Judge Advocate's Office; one case exonerated the subject; and the remaining case was not presented to the Department of Justice because the subject committed suicide.

The two Department of Justice cases were presented to the Criminal Division of a U.S. Attorney's Office, and the Civil Division of the Department of Justice, respectively. Both cases were declined for prosecution. In the first case, the U.S. Attorney's Office did not believe the incident (misuse of GWOT funds) warranted criminal investigation or prosecution. The military command took administrative actions against the soldiers. In the second case, the Department of Justice declined to intervene in a *Qui Tam* complaint because there was insufficient evidence to believe the subject defrauded the U.S. Government.

c) Were any of those investigations closed or declined for lack of jurisdiction or on other purely legal grounds? If yes, how many and what were the legal grounds?

Please see response above.

d) In the cases where you consulted with DoJ, did DoJ provide you or your staff with any guidance concerning your lack of jurisdiction to investigate or prosecute possible violations of U.S. law? If yes, what was that guidance?

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Although we regularly consult, coordinate, and work cooperatively with Federal prosecutors (usually Assistant U.S. Attorneys), the Department of Justice did not provide us with any specific guidance concerning lack of jurisdiction to investigate or prosecute possible violations of U.S. law in these investigations.

e) Of the ongoing, active investigations, how long have those cases remained pending at DoJ?

Our investigators discuss their investigations with prosecutors as soon as sufficient information is developed to indicate that a possible violation of U.S. law has occurred. We believe this approach promotes the partnership that is vital for successful prosecutions. The 56 active GWOT investigations are at various stages of investigation. As a result, the length of time investigations have remained pending resolution ranges from two months to over a year.

Referral of Investigations to DoJ/National Procurement Task Force

3. Prior to October 2006, the Department of Justice had no unit specifically responsible for prosecution of fraud in Iraq. Before creating the National Procurement Fraud Task Force, it was not clear to whom you referred your investigations, and who made the decisions on what cases were to proceed, or not.

a) Prior to October 2006, what unit at DoJ was responsible for reviewing your investigations, and what DoJ unit made decisions about what cases were to proceed?

We have received support from the Criminal and Civil Divisions of various U.S. Attorney's Offices and sections and divisions of the Department of Justice (Main Justice), to include the Antitrust Division and Public Integrity Section. DCIS has also presented cases to the Staff Judge Advocate's offices for prosecution under the Uniform Code of Military Justice.

b) Did you make any request to DoJ that a unit be created to handle your cases more effectively, and, if so, when was that request made?

The DoD OIG has not asked DoJ to create a separate unit to handle the agency's cases.

c) Has any official at DoJ given you or your staff any explanation for why no unit was created before October 2006?

In our view, there has always been a mechanism in place for prosecuting fraud in Iraq. Referrals are traditionally made to regional U.S. Attorney's Offices and/or Main Justice. The National Procurement Fraud Task Force has also brought greater law enforcement

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focus to fraud investigations nationwide and overseas. Specifically, the Task Force was created to promote the prevention, early detection, and prosecution of procurement fraud. The Task Force has established a new intake procedure for fraud cases associated with GWOT to ensure a unified and coordinated approach for investigating and prosecuting fraud cases associated with contracting in Afghanistan, Kuwait, and Iraq, and other cases involving the Global War on Terror.

Investigations by DoD IG and Other Agencies

4. In the testimony from the SIGIR, he indicated that his office has initiated more than 300 investigations into fraud and abuse in Iraq, including 79 ongoing, active investigations. (see SIGIR Testimony, page 2). It is unclear whether these investigations are different or the same as investigations conducted by the DoD IG.

a) To your knowledge, are any of these SIGIR investigations the same as the DoD IG investigations? If yes, could you clarify how many of the cases are the same (we will be asking the same questions of the SIGIR).

DCIS is currently working four joint investigations with SIGIR.

Investigative Resources in Iraq

5. In his testimony, the SIGIR indicated that there were a total of about 20 full-time fraud investigators in Iraq and Kuwait combined: 8 from your office, 8 from Army Criminal Investigative Division (Army CID), 3 from the Department of Defense Inspector General (DOD IG), and 1 from the USAID Inspector General (see SIGIR Testimony, page 3). If and when the SIGIR no longer has responsibility for oversight in Iraq, about 40 percent of the investigative resources will be removed from Iraq and Kuwait.

a) What, if any, plans are in place to ensure full oversight of the reconstruction process remains active after the SIGIR's authority expires?

The Global War on Terrorism is a significant priority within DoD OIG. We will remain an active player in preventing and detecting fraud in the Iraqi theater and worldwide where DoD programs, operations, resources, and personnel are involved. DCIS is also an active member of the International Contract Corruption Task Force. By working in partnership with other Federal law enforcement agencies, we believe that fraud investigations will continue to be pursued in an efficient and effective manner. DoD OIG's Investigation and Audit components have an excellent working relationship and utilize a team approach to fight fraud, waste, and abuse impacting the Department of Defense. The DoD OIG will make every effort to ensure that appropriate oversight of the reconstruction process continues after the SIGIR's authority expires. SIGIR is set to

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terminate 10 months after 80 percent of the funds of the IRRF have been expended it is estimated that SIGIR oversight is to continue until late 2008.

b) Do you believe the current number of fraud investigators in Iraq and Kuwait is sufficient to ensure all fraud allegations or other possible violations of U.S. laws are appropriately investigated?

Additional resources can result in more effective efforts to combat and deter fraud, waste, and abuse. However, taking into consideration DoD OIG's current staffing levels, and significant competing interests that must be also addressed (e.g., combating fraud, waste, and abuse within DoD's numerous domestic programs; preventing illegal technology transfer; preventing cyber crimes and protecting the Global Information Grid; corruption; joint terrorism task forces participation, etc.), we believe the number of investigators currently assigned to Iraq and Kuwait is appropriate.

Paying Contracts in Cash

6. The SIGIR has reported that the CPA paid for many contracts, services, and other obligations using billions in cash brought from the United States to Iraq. The SIGIR also found there was poor accountability for how that cash was disbursed to Iraqis and to contractors. At times, former and current government officials have tried to excuse paying out these cash disbursements as necessary where the banking system in Iraq was limited.

a) Do you agree with that assessment? Was it necessary for the CPA to pay out billions in cash?

We have not performed enough work and analysis to determine whether reconstruction or military contracts continue to be paid in cash. We will be able to answer this question when we complete our ongoing audits of Army/Navy/Air Force out of country cash.

b) Were there alternatives to paying the Iraqis in cash, and, if so, what were they?

Please see above response.

c) Did using cash create risks and incentives for fraud and abuse in Iraq?

Using cash always creates risk in that internal controls over cash disbursements are difficult to maintain under the best conditions.

7. There continue to be concerns that some contracts in Iraq are still paid in cash, even though this creates risks and incentives for fraud and abuse.

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a) To what extent have you found that reconstruction or military contracts continue to be paid in cash?

We have not performed enough work and analysis to determine whether reconstruction or military contracts continue to be paid in cash. We will be able to answer this question when we complete our ongoing audits of Army/Navy/Air Force out of country cash.

b) If so, does this ongoing practice create risks and incentives for fraud?

Again, when we complete our current ongoing work dealing with overseas and out of country cash, we will be in a position to answer this question. We currently have not done enough work to determine the cause for fraud in cash contracts. Internal controls over cash are difficult to maintain under the best conditions. We need to do more work to determine what breakdowns occurred in the particular instances of Iraq and Afghanistan.

c) Do you believe this practice should be discontinued?

We are not in a position to answer this question. We will be able to provide more information as we complete our ongoing audits of Army/Navy/Air Force out of country cash.

d) Are there additional safeguards that can be used to avoid the risks and incentives for fraud in cash contracts?

We currently have not done enough work to determine the cause for fraud in cash contracts. Internal controls over cash are difficult to maintain under the best conditions. We need to do more work to determine what breakdowns occurred in the particular instances of Iraq and Afghanistan.

8. In your testimony, you indicated that you are attempting to audit and investigate the use of cash contracts by reviewing documentation for the disbursements at an defense facility in Rome, N.Y (see DoD 10 Testimony, page 6).

a) Please describe more fully what efforts you are undertaking to review cash disbursements at this facility and how many documents exist at this facility to be reviewed?

We were able to identify more than 183,000 disbursement transactions valued at \$10.7 billion that were processed through DFAS Rome from February 2003 through June 2006. These payments were made by seven disbursing stations in Iraq, Kuwait, and Egypt. Because of the large volume of payments, we drew a random sample of 789 disbursement vouchers, totaling \$3.5 billion. Of the 789 disbursements, 702 valued at \$1.5 billion were for vendor and contract payments. Of the \$1.5 billion in vendor and contractor payments, \$67.4 million were cash disbursements. Of the 789 disbursements, 77 or \$1.96 billion

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were transfers of funds to the Iraqi government, Coalition Partners through the Commanders Emergency Response Program (CERP), and US Army Corps of Engineers (USACE) projects. Seventy of the transfer payments, totaling \$1.9 billion, were for cash. Of the remaining 10 disbursements, 9 were military travel allowances and 1 was a reverse collection. These 10 transactions were inappropriately classified by the disbursing stations as vendor and contractor payments.

We are reviewing the internal controls to determine whether the payments were properly supported and recorded. Specifically, we are reviewing the adequacy of the documentation to determine whether the disbursements were proper. In addition, we are trying to determine whether the Department of the Army and the Defense Finance and Accounting Service have internal controls in place to ensure that all payments are recorded and all supporting documentation is available. We are reviewing cash disbursements along with check and EFT payments. We will also analyze and compare the disbursement and obligation data in various information systems to determine whether discrepancies exist between sources of information. The review of internal controls is particularly important given the lack of visibility over the out of country disbursing stations and the fact that the disbursing and accounting systems are not integrated.

b) How many agents do you have assigned to this review, and do you need more resources to undertake this review effectively?

Presently, DCIS has assigned a senior special agent to the Defense Finance and Accounting Service (DFAS), Rome, NY, to coordinate activities at Rome, review the payment vouchers for potential fraud indicators, and prepare criminal referrals to the Joint Operations Center. As I stated during the hearing, we can always do more with more resources, but feel we are meeting mission requirements with the resources we currently have.

c) Have you opened any new investigations as a result of this review? If yes, how many and how many have been referred to DoJ for prosecution or civil enforcement action?

DCIS is gathering additional information on several investigative leads that have been identified to date through this proactive project. The investigative leads will be referred to the respective DCIS offices for case development. Once DCIS develops sufficient information on a subject to warrant a criminal investigation, a case will be initiated. The case agent has been working closely with an Assistant U.S. Attorney who is very supportive of this initiative.

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1. Please provide a complete and detailed explanation of the of these 29,000 Glock pistols for the Iraqi Security Ministry. Please clarify why the Army is taking the position that the initial solicitation of the Glock 17 model as the "weapon of choice" was later characterized as a "mistake." Did the acquisition of these pistols fully comply with the provisions of the Buy American Act and other domestic preference laws, since the contract went to a foreign manufacturer while an American company was prevented from bidding American made products? Did the military fully justify and obtain all necessary approvals for the "brand name only" acquisition prior to purchasing the weapons?

We plan to evaluate the circumstances related to the procurement of pistols for Iraqi Police Forces and Afghanis through the Joint Contracting Command - Iraq/Afghanistan and determine whether an audit is warranted. We plan to start our preliminary review within 30 days and will provide the committee an update upon completion of the preliminary review.

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1. Which do you think is more serious, and more prevalent, in Iraq: fraud, or waste?

Based on the work the DoD OIG has performed and professional judgment, waste is more prevalent than fraud.

The Department of Defense Office of the Inspector General (DoD OIG) has not performed the body of work required to provide a dollar amount for the amount of waste of fraud in contracts for reconstruction and support activities in Iraq. It is my opinion, based on the work we have performed and professional judgment that waste is more prevalent than fraud. The DoD OIG has issued several reports which identified mismanagement of funds for the global war on terrorism (GWOT) and lack of appropriate oversight related to contracting for goods and services.

In DoD OIG Report No. D-2006-007, "Contracts Awarded to Assist the Global War on Terrorism by the U.S. Army Corps of Engineers," October 14, 2005, we found that design and construction requirements were unclear and kept changing, which increased the cost of the work, and standards for Afghan construction were not formalized. In addition, we found that the Army Corps of Engineers:

- o inappropriately used Army operations and maintenance funds for a construction project for U.S. troops valued at \$35.2 million, a potential violation of the Antideficiency Act;
- o had two contracting offices awarding contracts pertaining to the same projects;
- o although several options were available, the U.S. Army Corps of Engineers still placed requirements (valued at \$19.7 million) with a single contractor when more competitive contracts were available;
- o contracting officials permitted out-of-scope items on one contract; and
- o improperly awarded task orders without clearly describing the work to be performed and without negotiating a fair and reasonable price prior to a contractor beginning work.

In DoD OIG Report No. D-2004-057, "Contracts Awarded for the Coalition Provisional Authority by the Defense Contracting Command-Washington," March 18, 2004, we found that:

- o personnel who generated contract requirements did not establish firm contract requirements;
- o contracts were awarded using General Service Administration Federal Supply Schedules and contracting officers misused General Service Administration Federal Supply Schedules;
- o contracting officers inappropriately awarded personal services contracts;
- o contracting officers permitted out-of-scope activity;
- o contracting officers did not support price reasonableness determinations; and
- o officials performed little or not Government surveillance on awarded contracts.

Additionally, we have identified DoD organizations that did not track or review GWOT

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related funds resulting in \$7.9 million of unused funds that were returned to the DoD Comptroller, where it was put to better use. We also have identified potential GWOT funds of \$4.6 million that were used for activities that did not support areas of Afghanistan and southwest Asia.

2. Some observers point out that there is little hard data available on what the government is actually spending on private contractors, and there has been no meaningful analysis of whether outsourcing to private contractors is actually saving taxpayers' money. Is there a reason that the DOD IG has not attempted to analyze either?

DoD contractor use is a matter of policy. We have not done any assessments regarding potential savings as a result of the use of contractors. We have done work relating to the appropriateness of specific contracts and have found that some benefit the government and save taxpayer money and others do not. To undertake a review of all current DoD contracts would require an in-depth review of each contract, its performance, and a comparison to what the same product or service would have cost the government to produce internally.

3. Both you and the SIGIR oversee contracts in Iraq. SIGIR oversees roughly \$25 billion, You oversee \$463 billion.

a. Why does the DOD IG only have 13 auditors in the Iraq area, compared to the SIGIR's 30 auditors?

Currently we have about 120 Office of the Inspector General personnel working with the Department and the Congress to provide oversight of the \$463 billion in DoD supplemental funds appropriated to support our fight against terror and to support our Armed Forces in Southwest Asia. In our strategic planning for an in-country presence in Southwest Asia, we assessed our operational and logistics requirements to provide oversight of DoD resources. In March 2006, we established a field office in Qatar to use as a preposition location for auditors being forward deployed to Southwest Asia locations to include Iraq. Our plan also included having a small team in place in-theater to complement our intent to successfully coordinate, facilitate, and conduct audits in Iraq without maintaining a large footprint that could hinder military operations. As such, we formally requested and obtained support in February 2007 from the Commander, Multinational Forces-Iraq (MNF-I) to establish a field activity for five people in Iraq. In addition to our established in-theater presence, OIG personnel perform temporary duty travel assignments within the Continental United States and Southwest Asia, including Iraq, as necessary to accomplish our oversight of Operation Iraqi Freedom and Operation Enduring Freedom. For example, during the audit of Equipment Status of Deployed Forces within U.S. Central Command, the audit team traveled on various occasions to Iraq, Kuwait, and Afghanistan to accomplish our oversight objectives.

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To provide this necessary oversight, we have had and will continue to have auditors deployed into Iraq to perform audits while maintaining an appropriate in-country presence. For example, we have performed audits in Iraq on the status of equipment, Iraqi Security Forces Fund, and Potable and Non-Potable Water Quality. Additional teams are being readied to deploy to Iraq to audit cash disbursements and the reset of ground vehicles and equipment in Iraq.

b. Why does the DCIS only have 4 investigators in the Iraq area, compared to the SIGIR's 8?

DCIS has two special agents in Iraq and two special agents in Kuwait. We are working to establish an office in Afghanistan. DCIS has a total of 36 special agents conducting war profiteering, contract fraud, and contract corruption investigations or investigative projects related to the war effort in Iraq, which includes the 4 that are Iraq/Kuwait based, 3 are Germany-based, and 29 are CONUS-based. Presently, DCIS has assigned a senior special agent to the Defense Finance and Accounting Service (DFAS), Rome, NY to coordinate activities at Rome and as well as potential criminal referrals to DCIS field offices.

c. Considering the above facts, do you feel you have been devoting enough attention and manpower to the issue of contractual waste and fraud in Iraq?

Supporting GWOT efforts is one of our top priorities and we continue to devote ever-increasing resources to support self-initiated, command-directed, and congressional requests. Many of those requests are focused on contractually based issues. Examples of these audits include the use of contractors for dissemination of information within Iraqi local community populations, procurement policies for armored vehicles, water quality for U.S. forces serving in Iraq, and procurement and use of body armor. We are continually evaluating our efforts in this area and taking into account on available resources and assessment of risk.

4. The GAO has reported that "DOD has long used contractors to provide supplies and services to deployed forces, but the scale of contractor support that DOD relies on in locations such as Iraq has increased considerably from prior operations."

a. Why has the DOD relied so heavily on contractors during this war, as opposed to other wars?

DoD contractor use is a matter of policy. We have not done any assessments regarding the level of reliance on contractors in this war as opposed to others.

b. Is Congress under-funding the DOD?

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Member: Senator Specter
Witness: Mr. Gimble

The role of the Inspector General is to identify fraud, waste, and abuse and to make recommendations to improve efficiency and effectiveness of department programs. Our reviews focus on individual programs. As such, we do not have a basis to make a determination whether resources available to the department as a whole are sufficient to accomplish its mission.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 18, 2007

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

Dear Mr. Chairman:

Please find enclosed responses to questions arising from the March 20, 2007, appearance before the Committee of Deputy Assistant Attorney General Barry Sabin at a hearing entitled "Combating War Profiteering: Are We Doing Enough to Investigate and Prosecute Contracting Fraud and Abuse in Iraq?" We hope that this information is of assistance to the Committee. 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,

A handwritten signature in black ink that reads "Richard A. Hertling".

Richard A. Hertling
Principal Deputy Assistant Attorney General

Enclosure

cc: The Honorable Arlen Specter
Ranking Minority Member

**WRITTEN QUESTIONS OF CHAIRMAN PATRICK LEAHY TO DEPUTY
ASSISTANT ATTORNEY GENERAL BARRY SABIN COMBATING WAR
PROFITEERING HEARING
MARCH 20, 2007**

Investigations of Fraud in Iraq

1. In your testimony to the Committee, you indicated that the Department of Justice ("DoJ") has brought nine criminal cases involving 25 individuals for fraud "relating to the Global War on Terror." Would you please provide additional details concerning these cases, including the following:

- (a) What were the sentences received by the defendants in these cases to date, and what was the average sentence received for those who have been sentenced?
- (b) Which defendants in these cases were given cooperation agreements with the government, and, in how many of those cases, did the government move for downward departures on behalf of those defendants at the time of sentencing?
- (c) Did DoJ attorneys enter into any agreements allowing defendants to pay restitution that was less than the full amount of the fraud, or provide any other financial benefit to the defendant?

If yes, please identify the cases, the reduction in restitution or financial benefit?
- (d) How many of these cases are continuing, and do you expect to bring further charges in any of these cases?
- (e) How many of these cases actually involved contracting fraud related to military or reconstruction activities in Iraq and Afghanistan?

Response to 1(a)-1(e): In question number one, you indicate that DoJ has brought nine criminal cases involving 25 individuals for fraud "relating to the Global War on Terror." To clarify, DoJ has brought 12 criminal cases involving these 25 individuals, 16 of whom have been convicted (six are awaiting sentencing).¹ The

¹ These 25 individuals can be grouped into the following 12 separate cases: (1) Gheevarghese Pappen; (2) Philip Bloom, Robert Stein, Bruce Hopfengardner, Curtis Whiteford, Debra Harrison, Michael Wheeler, William Driver and Michael Morris; (3) Jennifer Anjakos, Carlos Chavez, Derryl Holier, Jesse Lane and Luis Lopez; (4) Bonnie Murphy; (5) Samir Mahmoud; (6) Faheem Salam; (7) Mazon and Hijazi; (8) Glenn

average sentence received for those who have been sentenced is 2.5 years incarceration. Descriptions of the cases associated with these 16 convicted individuals are described below:

United States v. Philip Bloom, Case No. 06-CR-00053 (DDC)

- 1(a) Bloom was sentenced to 46 months incarceration, two years supervised release, and ordered to pay \$3.6 million in restitution and forfeit \$3.6 million for his role in a bribery and money laundering conspiracy arising out of Bloom's payment of bribes to Robert Stein, Bruce Hopfengardner and others in Al Hillah, Iraq.
- 1(b) Bloom entered into a plea agreement with the government that included a provision for the defendant to provide cooperation to the United States. At the time of sentencing, the government recommended a downward departure from the applicable guidelines range based upon the defendant's cooperation.

Bloom is prepared to testify at the trial of *United States v. Whiteford, Driver, Harrison, Wheeler, and Morris*, Case No 07-76 (DNJ), currently scheduled for February 2008. Three of the charged defendants, Colonel Curtis Whiteford and Lieutenant Colonels Debra Harrison and Michael Wheeler, are Army officers.

- 1(c) DoJ did not enter into any agreements allowing the defendant to pay restitution that was less than the full amount of the fraud, or provide any other financial benefit to the defendant.
- 1(d) As described in section 1(b), five additional defendants were charged for their conduct arising out of the same investigation. With respect to your question about future charges, we cannot comment about ongoing criminal investigations in instances where no charges have been brought.
- 1(e) *Bloom* involved contracting fraud in Iraq.

Powell; (9) Christopher Cahill; (10) Stephen Seamans; (11) Shabbir Khan and Zubair Khan; and (12) Peleti Peleti, Jr. These cases are described in more detail in the text below.

United States v. Robert Stein, Case No. 06-CR-00016 (DDC)

- 1(a) Stein was sentenced to 108 months incarceration, three years supervised release, and ordered to pay \$3.6 million in restitution and forfeit \$3.6 million.
- 1(b) Stein entered into a plea agreement with the government that included a provision for cooperation with the United States. At the time of sentencing, the government recommended a downward departure from the applicable guidelines range based upon the defendant's cooperation.

Stein is prepared to testify at the trial of *United States v. Whiteford, et al.*, Case No 07-76 (DNJ), currently scheduled for February 2008. Three of the five charged defendants, Colonel Curtis Whiteford and Lieutenant Colonels Debra Harrison and Michael Wheeler, are Army officers.
- 1(c) DoJ did not enter into any agreements allowing the defendant to pay restitution that was less than the full amount of the fraud, or provide any other financial benefit to the defendant.
- 1(d) As described in section 1(b), five additional defendants were charged for their conduct arising out of the same investigation. With respect to your question about future charges, we cannot comment about ongoing criminal investigations in instances where no charges have been brought.
- 1(e) *Stein* involved contracting fraud in Iraq.

United States v. Gheevarghese Pappen, Case No. 406-187 (SDGA)

- 1(a) Pappen was sentenced to two years incarceration, one year supervised release and ordered to pay a \$28,900 fine for accepting illegal gratuities while working as a Real Estate Specialist for the U.S. Army in Kuwait.
- 1(b) Pappen's plea agreement did not include a provision for cooperation with law enforcement authorities.
- 1(c) DoJ did not enter into any agreements allowing the defendant to pay restitution that was less than the full amount of the fraud, or provide any other financial benefit to the defendant.
- 1(d) We cannot comment about ongoing criminal investigations where no charges have been brought.
- 1(e) *Pappen* involved contracting fraud in Kuwait.

United States v. Bonnie Murphy, Case No 06-189 (MDFL)

- 1(a) Murphy was sentenced to one year probation and ordered to pay a \$1,500 fine for accepting illegal compensation from an Iraqi contracting firm.
- 1(b) Murphy's plea agreement did not include a provision for cooperation with law enforcement authorities.
- 1(c) DoJ did not enter into any agreements allowing the defendant to pay restitution that was less than the full amount of the fraud, or provide any other financial benefit to the defendant.
- 1(d) We cannot comment about ongoing criminal investigations in instances where no charges have been brought.
- 1(e) *Murphy* involved contracting fraud in Iraq.

United States v. Bruce Hopfengardner, Case No 06-CR-00204 (DDC)

- 1(a) Hopfengardner has pleaded guilty for his role in a bribery and money laundering conspiracy in Al Hillah-Iraq. Hopfengardner is scheduled to be sentenced on June 25, 2007, in the District of Columbia.
- 1(b) Hopfengardner entered into a plea agreement with the government that included a provision for cooperation with the United States. Until sentencing, any relevant cooperation will remain confidential.
- 1(c) DoJ did not enter into any agreements allowing the defendant to pay restitution that was less than the full amount of the fraud, or provide any other financial benefit to the defendant.
- 1(d) We cannot comment about ongoing criminal investigations in instances where no charges have been brought.
- 1(e) *Hopfengardner* involved contracting fraud in Iraq.

United States v. Jesse Lane, Case No. 07-165 (CDCA)

The defendants in the following set of cases were charged for their conduct in a scheme to commit wire fraud in which they manipulated a Department of Defense pay-processing computer in order to award themselves over \$320,000 in pay and entitlements for which they had not completed work. With the exception of Lane, all defendants have pleaded

guilty and are scheduled to be sentenced on September 10, 2007. Lane was indicted for conspiracy, honest services wire fraud and obstruction of justice. He is scheduled to stand trial in California in August 2007.

United States v. Jesse Lane, Case No. 07-165 (CDCA)

United States v. Luis Lopez, Case no. 06-723 (CDCA)

United States v. Derryl Holier, Case No. 06-721 (CDCA)

United States v. Jennifer Anjakos, Case No. 06-724 (CDCA)

United States v. Carlos Chavez, Case No. 06-722 (CDCA)

- 1(a) None of the defendants has yet been sentenced. Other than Lane, the defendants are scheduled to be sentenced on September 10, 2007.
- 1(b) The four defendants other than Lane entered into plea agreements that included provisions for cooperation with the government. Until sentencing, any relevant cooperation will remain confidential.
- 1(c) DoJ did not enter into any agreements allowing the defendants to pay restitution that was less than the full amount of the fraud, or provide any other financial benefit to the defendant.
- 1(d) As noted above, defendant Lane has been indicted, and his trial is scheduled to begin in August 2007. With respect to your question about future charges, we cannot comment about ongoing criminal investigations in instances where no charges have been brought.
- 1(e) These cases involved wire fraud and honest services wire fraud with conduct occurring both in the Republic of Kuwait and in the United States of America. The funds stolen by these individuals were set aside to pay those serving in support of Operation Iraqi Freedom and Operation Enduring Freedom.

United States v. Glenn Allen Powell, Case No. 05-40075 (CDIL)

- 1(a) Powell, a U.S. citizen and former KBR subcontracts administrator, was sentenced to 15 months imprisonment, three years supervised release, and ordered to pay \$90,973.99 in restitution in addition to a \$200 special assessment.
- 1(b) Powell entered into a plea agreement with the government that included a provision for cooperation with the United States. At the time of sentencing, pursuant to United States Sentencing Guidelines § 5K1.1, the government recommended a downward departure from the applicable sentencing guidelines range based upon the defendant's cooperation.

- 1(c) DoJ did not enter into any agreements allowing the defendant to pay restitution that was less than the full amount of the fraud, or provide any other financial benefit to the defendant.
- 1(d) This matter is closed. The government does not expect any further charges resulting from this investigation.
- 1(e) This case involved fraud and kickbacks under a LOGCAP III subcontract for construction of a warehouse in Iraq.

United States v. Stephen L. Seamans, Case No. 06-40017 (CDIL)

- 1(a) Seamans, a U.S. citizen and former KBR procurement materials and property manager, was sentenced to 12 months and one day imprisonment, three years supervised release, and ordered to pay \$380,130 in restitution and a \$200 special assessment.
- 1(b) Seamans entered into a plea agreement with the government that included a provision for cooperation with the United States. At the time of sentencing, pursuant to United States Sentencing Guidelines § 5K1.1, the government recommended a downward departure from the applicable guidelines range based upon the defendant's cooperation.
- 1(c) In this case, the plea agreement called for restitution beyond that supported by the criminal charges. Prior to Seamans' direct use immunity proffer, the government could only prove he had received \$60,500 in kickbacks. Under the restitution statutes, this is all Seamans was liable for criminally, absent agreement.

The government learned that Seamans received a total of \$438,860 in kickbacks. As part of the plea agreement, Seamans agreed to pay \$380,130 in restitution.
- 1(d) The government cannot comment on pending investigations where no charges have been brought.
- 1(e) This case involved fraud/kickbacks under a LOGCAP III dining facility subcontract in Kuwait and a LOGCAP III dining facility subcontract in Iraq.

United States v. Mohammad Shabbir Khan, Case No. 06-40055 (CDIL)

- 1(a) Shabbir Khan, a U.S. citizen and former management level employee of Tamimi Global Co. Ltd., was sentenced to 51 months imprisonment and two years supervised release, and ordered to pay \$133,860 in restitution, a \$10,000 fine, and a \$1,400 special assessment.

- 1(b) Shabbir Khan entered into a plea agreement with the government that included a provision for cooperation with the United States. At the time of sentencing, the government did not make a motion for a downward departure under United States Sentencing Guidelines § 5K1.1.
- 1(c) DoJ did not enter into any agreements allowing the defendant to pay restitution that was less than the full amount of the fraud, or provide any other financial benefit to the defendant.
- 1(d) This matter is related to the *Seamans* case. With respect to your question about future charges, the government cannot comment on pending investigations where no charges have been brought.
- 1(e) This case involved fraud/kickbacks under a LOGCAP III dining facility subcontract in Kuwait and a LOGCAP III dining facility subcontract in Iraq.

United States v. Christopher Cahill, Case No. 06-40004 (CDIL)

- 1(a) Cahill, a U.S. citizen and former management level employee with Eagle Global Logistics, was sentenced to 30 months imprisonment and two years supervised release, and ordered to pay a \$10,000 fine and \$100 restitution.
- 1(b) Cahill entered into a plea agreement with the government that included a provision for cooperation with the United States. At the time of sentencing, the government made a motion for downward departure under United States Sentencing Guidelines § 5K1.1.
- 1(c) DoJ did not enter into any agreements allowing the defendant to pay restitution that was less than the full amount of the fraud, or provide any other financial benefit to the defendant. The Court, however, did not order any restitution. Prior to Cahill's sentencing, his company, Eagle Global Logistics, entered into a civil settlement with DoJ that included the \$1.14 million the company benefited as a result of Cahill's fraud, plus treble damages.
- 1(d) The government cannot comment on pending investigations where no charges have been brought.
- 1(e) This case involved Eagle Global inflating invoices to KBR under a LOGCAP III subcontract for aerial logistical support in Iraq. Eagle Global was charging KBR a dummy war-risk surcharge, the cost of which the government ultimately bore.

United States v. Peleti Peleti, Jr., Case No. 06-40117

- 1(a) Peleti, a U.S. citizen and Chief Warrant Officer with the U.S. Army, has pleaded guilty to: one count of bribery, 18 U.S.C. § 201; one count of bulk cash smuggling, 31 U.S.C. § 5332; and one count of criminal forfeiture. His sentencing is scheduled for June 2007.
- 1(b) Peleti entered into a plea agreement with the government that included a provision for cooperation with the United States. Until sentencing, any relevant cooperation will remain confidential.
- 1(c) DoJ did not enter into any agreements allowing the defendant to pay restitution that was less than the full amount of the fraud, or provide any other financial benefit to the defendant.
- 1(d) The government cannot comment on pending investigations where no charges have been brought.
- 1(e) This case involved attempted fraud and bribery with respect to U.S. government contracts/subcontracts in Kuwait relating to dining facilities services. The defendant received the actual bribe but was unsuccessful in steering any government contracts towards the Iraqi contractor that paid the bribes.

United States v. Samir Mahmoud, Case No. 46-37-2885 (EDMI)

- 1(a) On March 28, 2007, Mahmoud was sentenced to time served, and two years supervised release, with the first 90 days in a community correction center.
- 1(b) Mahmoud entered into a plea agreement that included a provision for cooperation with the United States. At the time of sentencing, the government did not make a motion for a downward departure under United States Sentencing Guidelines § 5K1.1.
- 1(c) As part of the defendant's plea to violation of false statements, no restitution was requested. Mahmoud forfeited \$29,819.59 that he had received from subcontractors in Iraq.
- 1(d) The government cannot comment on pending investigations where no charges have been brought.
- 1(e) Mahmoud's case involved false statements to investigators, but the investigation focused on contracting fraud related to reconstruction activities in Iraq.

United States v. Faheem Mousa Salam, Case No. 00157-RJL

- 1(a) Salam was sentenced on February 5, 2007, in U.S. District Court for the District of Columbia to 36 months imprisonment and two years supervised release.
- 1(b) Salam entered into a plea agreement with the government that included a provision for cooperation with the United States. At the time of sentencing, the government recommended a downward departure from the applicable guidelines range based upon the defendant's cooperation.
- 1(c) DoJ did not enter into any agreements allowing defendant to pay restitution that was less than the full amount of the fraud, or provide any other financial benefit to the defendant.
- 1(d) The case related to Salam is concluded, and we do not expect to bring further charges.
- 1(e) Salam's case involved bribery of foreign officials in connection with private transactions unrelated to Salam's employment by a U.S. defense contractor.

Referrals and Declinations of Contracting Fraud in Iraq

2. In testimony by the Inspectors General, it is clear that many more cases have been referred to the DoJ than have been prosecuted so far. The Special Inspector General for Iraq Reconstruction (SIGIR) indicated that he has opened more than 300 investigations into fraud, waste, and abuse in Iraq, and currently has 79 active investigations, of which 28 are pending prosecution by DoJ. The Department of Defense Inspector General (DoD IG) indicated that he has opened 83 investigations into contracting fraud, including 56 criminal investigations by the Defense Criminal Investigative Service (DCIS) into "war profiteering, contract fraud, and contract corruption." As you know, the Army Criminal Investigation Division (Army CID), the United States Aid for International Development Inspector General ("USAID IG"), the State Department Inspector General (State IG), and the Federal Bureau of Investigation (FBI) are also actively investigating contracting fraud in Iraq and Afghanistan.

- a) How many investigations have been referred to DoJ for criminal prosecution alleging contracting fraud related to the military or reconstruction activities in Iraq?

Response: DoJ continues the process of gathering data to determine how many fraud and corruption cases have been referred to DoJ (including to individual U.S. Attorneys' offices, nationwide) for criminal prosecution alleging contracting fraud related to the military or reconstruction activities in Iraq.

As noted by those participating in the hearing on these matters, criminal investigations often involve a lengthy process. The inherent hazards present in war zones add additional concerns and difficulties to that process. Inspector General Bowen noted during the course of his testimony that corruption and fraud, while egregious when found, have been "a relatively minor component" of the overall effort, when measured against the total U.S. investment in Iraq. "Waste has been the larger issue in Iraq." As the Committee may recognize, the process of review of a criminal allegation is a complex one. Indeed, as Inspector General Bowen noted in his testimony, while SIGIR may have received hundreds of allegations of criminal conduct involving corruption or fraud in Iraq, proving those allegations to the requisite standard of proof in a court of law is a different matter. The investigative process depends on competent witnesses coming forward with, and ultimately being willing to testify to, information of wrongful conduct. During the course of these investigations, DoJ's advisory role includes regular contact with federal investigators in Afghanistan, Kuwait, and Iraq where it provides investigatory and legal guidance on, *e.g.*, the mechanics of carrying-out corruption investigations, questions regarding criminal intent, sufficiency of evidence, and burdens of proof. Potential referrals for further investigation or prosecution are often resolved during these consultations. Part of this process involves the FBI's agreement (as part of the International Contract Corruption Task Force) with SIGIR to run investigative leads, even before the task force opens a formal investigation.

To date, DoJ has handled approximately 100 investigations or cases. As noted in our answer to question one, those 100 matters include 25 individuals whom the Department has charged criminally, 16 of whom have been convicted (six are awaiting sentencing), while the remaining nine have charges pending against them. As Inspector General Bowen noted during questioning, DoJ has acted or considered action on every case that SIGIR has presented to DoJ, and that "the turndown rate of [SIGIR] cases has been low."

- b) How many investigations have been referred to DoJ for civil enforcement alleging contracting fraud or abuse related to the military or reconstruction activities in Iraq?

Response: As of March 31, 2007, several civil enforcement matters have been opened involving potential False Claims Act violations related to the military or reconstruction activities in Iraq.

- c) How many of those criminal investigations have been declined?

Response: See answer above in 2(a). Also, for criminal matters referred to DoJ at least six matters have been declined for criminal prosecution because the conduct did not rise to a criminal violation.

- d) How many of those civil enforcement actions have been declined?

Response: None of the civil cases referenced in response to question 2(b) has been declined.

- e) Have any of those criminal investigations or civil enforcement actions been declined for lack of jurisdiction, or for purely legal reasons?

Response: Not Applicable to civil enforcement matters. As to the criminal matters referred to in 2(c), none of those has been declined for lack of jurisdiction.

If yes, please identify the number of cases, and the legal basis for the declination.

- f) How many of those cases remain pending review by DoJ, and how many of those cases have been pending for longer than one year?

Response: To date, DoJ has handled approximately 100 investigations or cases. Those 100 matters include 25 individuals whom the Department has charged criminally, 16 of whom have been convicted (six are awaiting sentencing), while the remaining nine have charges pending against them. The remaining matters are still open. DoJ is determining how long these investigations have remained pending.

Iraqi Investigations of Fraud/Possible Violations of U.S. Law

3. At the hearing, the SIGIR testified that Iraqi authorities are conducting as many as 2,000 ongoing fraud investigations involving about \$8 billion in missing funds. At the hearing, the SIGIR indicated that his office had not participated in, or even reviewed, the allegations in those cases.

- (a) What, if any steps has DoJ or its agencies undertaken to review those investigations to determine if they contain allegations of possible violations of U.S. laws?

If none, why has DoJ chosen not to review those allegations of fraud?

- (b) Do any of those investigations relate to funds disbursed by the Coalition Provisional Authority (CPA), which was administered by U.S. officials

and expended U.S. funds, as well as money seized from the Iraqi government?

If yes, how many cases, and will DoJ pursue those investigations for possible violations of U.S. law?

- (c) Do any of those investigations relate to false statements made to U.S. officials working for the CPA, the military, or any other government entity?

If yes, how many cases, and what steps will DoJ take to pursue those investigations for possible violations of U.S. law?

- (d) Do any of those ongoing investigations involve allegations of misconduct, corruption, or other malfeasance by U.S. officials or U.S. citizens in Iraq?

If yes, how many cases, and what steps will DoJ take to pursue those investigations for possible violations of U.S. law?

- (e) Has DoJ offered any guidance related to jurisdictional issues or impediments to the SIGIR, the DoD IG, or other investigative agency related to participating in any of these 2,000 fraud investigations, and, if so, what was that guidance? Please provide any documents reflecting that guidance.

Response: The Commission on Public Integrity (CPI) was established by Coalition Provisional Authority (CPA) Order 55 in 2004 (following the fall of the Saddam Regime) as an independent, investigative agency of the Government of Iraq. It has reportedly opened and initiated investigations pursuant to its files involving allegations of waste, fraud, and abuse by officials and employees of Iraqi ministries and offices. Approximately 2,100 of these investigations have been referred by the Commissioner of Public Integrity to the Central Criminal Court of Iraq (CCCI) (also an independent entity of the Government of Iraq) for further investigation and, as appropriate, trial.

While some of the CPI files have, in fact, been the subjects of further, productive investigation and then trial by the CCCI judges -- including, as examples, criminal prosecutions against and convictions of former officials of the Iraqi Ministries of Electricity and Oil -- the great majority of those cases remain under investigation as material evidence (including witness statements) is gathered and analyzed.

A team of Department of Justice (DoJ) trainers/mentors, in coordination with other federal agencies, is helping develop capacity for the CPI to conduct complex anti-corruption investigations. In the course of its instructional work with CPI investigators and in other settings, the DoJ trainers/mentors have learned that the CCCI investigative judges are frequently dissatisfied with the depth, the level, and the completeness of files referred to the Court. It is for precisely this reason that, in the past year, DoJ has arranged for CCCI investigative and trial judges to speak directly with CPI investigator-trainees about judicial expectations for the quality of the files that the CPI refers to the courts.

To promote the professionalism and efficiency of the critical investigative work by the CPI and the CCCI, DoJ provides assistance, training, mentoring, instruction, and other forms of direct support to CPI Staff, including newly-recruited/hired anti-corruption investigators. At the same time, to ensure that the sovereignty and independence of key law enforcement institutions of the Government of Iraq -- including its investigative agencies and criminal courts -- are observed and promoted, it is not DoJ practice to become directly involved with the CPI and the CCCI in their substantive investigation, charging, prosecution, and disposition of particular criminal cases involving public corruption.

To address the legitimate concern about the extent to which funds of the United States Government given to the Government of Iraq during the period of CPA activity may be involved, directly or indirectly, in these currently pending corruption cases, DoJ is in the process of seeking more information about these matters. In this undertaking, it is anticipated that SIGIR and/or DoJ may be in a position to determine whether any of the CPI's on going investigations implicates funds previously disbursed by the CPA to the Government of Iraq, funds seized from the Government of Iraq or any of its officials, false statements made to representatives of the United States Government during the CPA period, and/or criminal misconduct by any civilian or military representatives of the United States Government in connection with those fiscal allocations.

It appears that the \$8 billion denoted as "missing funds" refers almost exclusively to Development Fund for Iraq (DFI) (established pursuant to United Nations Security Council Resolution 1483, dated 21 May 2003) funds transferred to the Government of Iraq by the CPA. While the funds were under the control of the CPA, their expenditure was subject to many of the same laws and regulations that govern other congressionally appropriated funding streams. Currently, the FBI has one open investigation into potential fraudulent or corrupt acts relating to the expenditure of CPA funds. To the extent the DFI funds were transferred to the Government of Iraq, however, the United States has limited ability to audit the accounting practices of the Government of Iraq. The FBI also currently has many pending investigations into potential acts of fraud and corruption relating to the U.S. Government's funding of operations conducted as part of the Global War on

Terror in Iraq, Kuwait, and Afghanistan. Several of these investigations involve potential criminal activity in those countries.

Finally, as indicated above, to the extent that these CPI cases involve Iraqi financial interests (whether commingled with those of the United States Government or not), DoJ will continue its supportive, mentoring role to promote and encourage the professional and efficient gathering and analysis of critical evidence and other case materials. That may also include assistance with and instruction on jurisdictional and procedural issues designed to build the capacity of the Government of Iraq (including but not limited to the CPI and the CCCI) in its administration of this important work. To the extent that these cases implicate Iraqi interests only, the Government of Iraq, with DOJ support, is in a position to investigate and prosecute these cases.

On these particular matters, DoJ has not been requested to offer, and has not offered, any guidance related to jurisdictional issues or impediments to the SIGIR, the Department of Defense Inspector General, nor other U.S. Government investigative agencies related to participating in any of these investigations.

Investigative Resources in Iraq

4. In the SIGIR's testimony, he indicated that there were a total of about 20 full-time fraud investigators in Iraq and Kuwait combined: eight from SIGIR, eight from Army CID, three from DoD IG, and one from the USAID IG (see SIGIR Written Testimony, page 3). The SIGIR did not identify any fraud investigators from the FBI placed in Iraq.

- a) Is DoJ aware of any FBI investigators in Iraq, Afghanistan, or Kuwait working full-time on contracting fraud? If so, how many?

Response: The FBI currently has one Special Agent (SA) in Iraq and one SA in Kuwait. These SAs are dedicated to working corruption and fraud related matters and are rotated every 120 days. The FBI has assigned an Assistant Legal Attaché (ALAT) to Baghdad; this SA will arrive during the summer of 2007. In addition, the FBI plans to place an SA in Kabul in the fall of 2007.

- b) Does DoJ feel the FBI resources in Iraq, Afghanistan, and Kuwait are sufficient to investigate contracting fraud and abuse there?

Response: The extensive use of contractors in Iraq, Afghanistan, and Kuwait has created an opportunity for fraud and corruption on a larger scale than existed during previous military operations. Consequently, the demands on United States Government investigative resources have substantially increased. The FBI has made combating corruption and fraud the number one

priority of its Criminal Investigative Division and has received some funding for investigative activities in Iraq, Afghanistan, Kuwait and the United States. Having personnel "in theater" is a high priority because each violation uncovered outside the United States requires many more hours of investigation within the United States to successfully prosecute the case. We will continue to use our resources to effectively investigate and prosecute these matters and encourage Congress to fully fund the President's budget for FY 2008.

Views on War Profiteering Prevention Act of 2007

5. On January 19, 2007, I asked the Attorney General whether DoJ supported passage of the War Profiteering Prevention Act of 2007 (S. 119). The Attorney General indicated that he would review the bill, and there was an expectation that DoJ would offer its opinion on the bill prior to or during the hearing on war profiteering.

a) Does DoJ support this legislation? Please explain.

Response: "As you are aware, the Department transmitted out views to the Committee on S. 119 by way of a letter to Chairman Leahy, dated March 28, 2007." 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, we are concerned that enactment of 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 that 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 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, § 5332 (bulk cash smuggling), Title 41, Section 51 *et. seq.* (the Anti-Kickback Act), and Title 18, §§ 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, the following amendments to the general fraud statutes may provide options for eliminating some of 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 are adequately defined).
- United States Code Title 18, Section 1956 (money laundering) could be amended by listing certain general fraud statutes (*e.g.*, 18 U.S.C. Section 1031 and 41 U.S.C. Section 51, *et. seq.*) as “specified unlawful conduct.”
- United States Code Title 18, Sections 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. Section 5332 (bulk cash smuggling) and 41 U.S.C. Section 51 *et. seq.* (the Anti-Kickback Act)).
- The general fraud statutes could be amended by including an explicit provision for extraterritorial jurisdiction.

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

If the Committee proceeds with the enactment of S. 119, the Department 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. We offer the following examples:

- In Section (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 any future legal challenges.
- In Section (a)(1), the meaning of “within the jurisdiction of the United States” is unclear. We recommend adopting language from United States Code Title 18, Section 1031(a), which is more specific in that it links the illicit conduct to a prime/sub “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 United States Code Title 18, Section 7(9).

- Section (a)(1) imposes an additional element of proof which would complicate our prosecutions. The proposed provision includes the term “willfully” even though other statutes in Title 18 such as bank fraud, wire fraud, mail fraud, and major fraud against the United States, among others, 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 United States Code Title 18, Section 1348, seems to create a higher burden of proof for the government than would be necessary in order to effectively address this type of criminal conduct.
- Paragraph (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.
- Paragraph (a)(1)(B)(i) appears to be unnecessarily vague. The provision makes 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 pertain. Perhaps (a)(1) can 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 paragraph (a)(1)(B)(i).
- Section (b) provides for “extraterritorial Federal jurisdiction.” Although the Department is not necessarily opposed to this provision, we are concerned that such a provision might have the unintended consequence of undermining our efforts to extraterritorially apply the general statutes, which do not contain such a provision. Circuit Courts have held the general statutes could be extraterritorially applied 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 may consider including in S. 119 a provision for conspiracy or attempt.
- We recommend that United States Code Title 18, Section 2516 (c) (authorization for wire interception) be amended to include S. 119 as a predicate for authorization of wire interception.

No Criminal Sanctions for KBR

6. DoJ has brought a number of criminal cases against employees of Kellogg, Brown & Root (KBR), one of the largest military contractors operating in Iraq, and, in some of those cases, the employees have admitted to committing crimes while working for KBR. In these cases, KBR received additional profits as a result of this criminal conduct. So far, DoJ has declined to bring any criminal action against KBR, or any formal legal action, for the criminal conduct of these employees.

- (a) How many criminal cases brought to date have involved an employee of KBR, and what is the criminal conduct alleged or proven in those cases?
- (b) How many KBR employees were offered cooperation agreements or other leniency by DoJ in those cases, and what, if any, reductions in sentences or other lenience did the KBR employees receive as a result?
- (c) What, if any, criminal fines or penalties has KBR paid as a result of this criminal conduct?

If no criminal fines or penalties have been paid, why did DoJ not seek such criminal penalties when KBR employees committed crimes that benefited KBR?

- (d) What, if any, restitution has KBR made in these cases? Please provide any documents reflecting these payments.
- (e) What, if any, oral or written agreements has DoJ entered into with KBR or its representatives related to these cases or the conduct of their employees in these cases?

Response to 6(a)-6(e): DoJ has taken an aggressive, proactive approach to combating procurement fraud and to ensuring that corrupt individuals and companies are appropriately punished. The LOGCAP Working Group, which operates out of the U.S. Attorney's Office in the Central District of Illinois, has filed criminal charges against eight individuals for bribery and kickbacks associated with Iraq reconstruction efforts. LOGCAP III is a ten-year contract awarded to KBR in December 2001, and incorporates task orders issued by the U.S. Army to support Operation Iraqi Freedom. Three out of the eight individuals charged by the LOGCAP Working Group involve employees of KBR. The charges against these three employees are described below. To date, the LOGCAP Working Group has not filed criminal charges against KBR.

United States v. Jeff Alex Mazon and Ali Hijazi, Case No. 05-40024 (CDIL)

- 6(a) This case involves one employee (now former) from KBR (Mazon) and one resident of Kuwait (Hijazi). The indictment charges both defendants with four counts of major fraud against the United States, 18 U.S.C. § 1031(a), and six counts of wire fraud, 18 U.S.C. § 1343. The indictment alleges the defendants inflated by approximately \$4.0 million a subcontract Mazon awarded to Hijazi's company for fuel tankers under the LOGCAP III prime contract. The indictment further alleges that, following Mazon's employment with KBR, Mazon received a \$1 million check from Hijazi as an award for Mazon's favorable treatment of Hijazi's company.
- 6(b) N/A
- 6(c) KBR has not paid any criminal fines or penalties as a result of this alleged criminal conduct because KBR has neither been charged nor convicted criminally for the alleged criminal conduct of its employee.
- 6(d) In January 2004, KBR paid \$6.3 million to the Army Field Support Command relating to Mazon's alleged illicit conduct.
- 6(e) At this time, the only agreement that the LOGCAP Working Group has entered into with KBR relates to its production of documents to the government.

United States v. Glenn Allen Powell, Case No. 05-40075 (CDIL)

- 6(a) Powell, a U.S. citizen and former subcontracts administrator for KBR, awarded a LOGCAP III subcontract in the amount of \$609,000 to an Iraqi company for the construction of a warehouse in Iraq. Pursuant to a kickback agreement between Powell and a principal of the Iraqi company, the amount of the kickback owed to Powell under the subcontract was approximately \$121,800. Powell received \$113,000 of this amount. Powell was charged with and pleaded guilty to one count of major fraud against the United States, 18 U.S.C. § 1031(a), and one count of violating the Anti-Kickback Act, 41 U.S.C. §§ 53 and 54.

Note: The facial discrepancy between the kickback amount and the amount of restitution ordered by the Court (*see* 1(a) above relating to Powell case) was due to forfeiture proceeds being applied to the amount by which the government was defrauded. Hence, between the forfeiture amount and the restitution amount, the government will be made whole upon payment by Powell of the restitution.

- 6(b) Powell entered into a plea agreement with the government that included a provision for cooperation with the United States. At the time of sentencing, pursuant to United States Sentencing Guidelines § 5K1.1, the government recommended a downward departure from the applicable guidelines range based upon the defendant's cooperation. Powell's applicable Sentencing Guideline Range was 24-30. The government recommended a sentence of 21 months.
- 6(c) There are no criminal fines or penalties against KBR because KBR has not been criminally charged.
- 6(d) Unknown.
- 6(e) At this time, the only agreement that the LOGCAP Working Group has entered into with KBR relates to its production of documents to the government.

United States v. Stephen L. Seamans, Case No. 06-40017 (CDIL)

- 6(a) Seamans, a U.S. citizen and former KBR procurement materials and property manager was charged in a two-count criminal information with wire fraud, 18 U.S.C. § 1343, and money laundering conspiracy, 18 U.S.C. § 1956(h). The charges arose out of a kickback agreement Seamans entered into with a manager of a Saudi Arabian company in relation to a LOGCAP III dining facility subcontract at Camp Arifjan, Kuwait. As stated in his plea agreement, which is a public document, the government learned from Seamans' direct use immunity proffer statement that the Saudi Arabian company paid Seamans a total of \$123,895 in kickbacks in relation to the Camp Arifjan DFAC subcontract and an DFAC subcontract at the Royal Palace in Iraq. Also pursuant to the proffer, the government learned that Seamans received \$305,000 in kickbacks from a Kuwaiti company.²
- 6(b) Seamans entered into a plea agreement with the government that included a provision for cooperation with the United States. At the time of sentencing, the government recommended a downward departure from the applicable guidelines range based upon the defendant's cooperation. Seamans' sentencing range was 24-30 months prior to the motion for departure. The government recommended a sentence of 16 months incarceration. The Court sentenced the defendant to 12 months and one day incarceration.

² The cases against Zubair Kahn and Shabbir Kahn, who are not KBR employees, referenced in our responses to 1(a)-1(e), arise out of the *Seamans* case.

- 6(c) KBR has not paid any criminal penalties or fines in connection with this matter because KBR has not been criminally charged.
- 6(d) Unknown.
- 6(e) At this time, the only agreement that the Logcap Working Group has entered into with KBR relates to its production of documents to the government.

False Claims Act Cases

7. To date, DoJ has joined or brought publicly very few False Claims Act cases related to the military or reconstruction activities fraud in Iraq. In oral testimony provided to the Committee, Mr. Sabin indicated that about \$11 million had been recovered in these cases to date, largely in two *qui tam* cases (one of which was also a criminal case).

- (a) How many False Claims Act cases related to military or reconstruction activities in Iraq are currently under review by DoJ?

Response: Although we cannot comment about ongoing cases in instances where no claims have been brought, there are currently many matters involving potential violations of the False Claims Act related to the military or reconstruction activities in Iraq are under review by DoJ.

- (b) How many of these cases have been pending for longer than one year?

Response: Several of the matters referenced in the response to question 7(a) have been pending for longer than one year.

- (c) How many full-time civil attorneys are assigned to review and work on these cases?

Response: Thirteen Civil Division attorneys and three supervisors are assigned to one or more of the Iraq matters. However each of the attorneys and supervisors also work on other matters and cases. This figure does not include civil Assistant United States Attorneys working on these matters.

- (d) Does DoJ have sufficient resources to review and aggressively pursue these pending False Claims Act cases?

We will continue to use our resources to effectively pursue these matters and encourage Congress to fully fund the President's budget for FY 2008.

- (e) How many of these False Claims Act cases has DoJ intervened in a case brought by a relator, and how many of these cases has DoJ initiated a case independently?

Response: DoJ has partially intervened in one *qui tam* case brought by a relator to settle allegations against Eagle Global Logistics for \$4 million related to fraudulent war risk insurance surcharges.

National Procurement Fraud Task Force

8. You testified that DoJ is committed to strong and vigorous enforcement of contracting fraud and abuse in Iraq and Afghanistan, and pointed to creation of the National Procurement Fraud Task Force as part of this response. Yet, this task force was created more than three years after the war started, and overall, DoJ has brought only nine criminal cases involving 25 individuals related to contracting fraud in Iraq and Afghanistan. By comparison, DoJ created the Hurricane Katrina Fraud Task Force less than two weeks following the storm, and that task force has apparently brought more than 400 indictments involving more than 500 individuals related to fraud during the relief and reconstruction activities related to Hurricane Katrina.

- a) Why did DoJ not form a task force to address fraud in Iraq shortly after the war began, as it did with fraud related to the reconstruction activities shortly after Hurricane Katrina?

Response: The office of the Special Inspector General for Iraq Reconstruction (SIGIR) was established to investigate fraud in connection with the reconstruction of Iraq, along with Department of Defense investigative agencies and the Federal Bureau of Investigation. The Department of Justice has worked continuously with these investigators to review allegations of wrongdoing relating to the wars in Iraq and Afghanistan. As detailed above, the Department and these investigators have successfully investigated and prosecuted several cases of fraud relating to these wars. The Department will continue to do so.

The Department, acting through the FBI was also instrumental in creating the International Contract Corruption Task Force (ICCTF), to strengthen our efforts in Iraq. The ICCTF established a Joint Operations Center (JOC) currently located in Crystal City, Virginia, which will be moving in May 2007, to Washington, D.C. The FBI currently has two Supervisory Special Agents assigned on a part time basis to the ICCTF – JOC as well as four Intelligence Analysts and two support employees. The FBI has two ALATs deployed overseas and more than 25 SAs working on a part-time basis both internationally and within the U.S. to address ICCTF investigations. In addition, the International Working Committee of the NPFITF is also working to address procurement fraud relating to the wars in Iraq and Afghanistan, among other international issues.

- b) Where is the task force located, and how many attorneys and agents are assigned full-time to the Task Force?

Response: The National Procurement Fraud Task Force (NPFTF) is led by the Deputy Attorney General and the Assistant Attorney General for the Criminal Division. Steve A. Linick, a Deputy Chief in the Fraud Section, 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 run out of Washington, D.C.

Although there are no attorneys and agents exclusively dedicated full-time to the Task Force, there are many agents and attorneys currently working Task Force cases and working to implement the Task Force's goals and objectives. The prosecutorial resources of the Criminal, Civil, Tax, and Antitrust Divisions of the DOJ have been utilized in this initiative to ensure competing resource needs are balanced and meritorious cases are identified, investigated, and prosecuted effectively in appropriate venues. Additionally, investigative resources have been provided by the FBI and Offices of Inspectors General participating in the Task Force. The Task Force includes; the Inspectors General from the following agencies the Department of Justice, the Department of Defense; the General Services Administration; the Department of Homeland Security; the Department of the Treasury; the Small Business Administration; the 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.

To accomplish its 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. The International/Iraq Committee, which focuses on issues relating to the wars in Iraq and Afghanistan, is chaired by FBI Assistant Director CID Chip Burrus. This committee oversees the ICCTF, which, as described above in answer to question 8(a), is dedicated to combating fraud and corruption relating to the expenditure of U.S. Government funds overseas, and focusing primarily on Iraq, Afghanistan, and Kuwait.

The NPFTF 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 and consist of federal agents and attorneys from those regions. 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.

- c) How do those resources compare to the resources committed to the Hurricane Katrina task force?

Response: The Department of Justice has devoted significant resources to both efforts. The NPFTF was created to promote the prevention, early detection, and prosecution of procurement fraud. As addressed above, it is designed to target procurement fraud across the United States and internationally. The domestic agencies who participate in the Hurricane Katrina Fraud Task Force also participate in the NPFTF. These agencies include the Department of Homeland Security, the Department of Housing and Urban Development, the Department of Transportation, the Department of Labor, and many others. In addition, the Department of State, Central Intelligence Agency, National Reconnaissance Office, and others participate in the NPFTF. The NPFTF does not have any prosecutors or agents who are assigned to work on the Task Force full time. However, there are agents and prosecutors across the country who are part of the task force and spend at least part of their time on procurement fraud cases. Due in part to supplemental appropriations, the HKFTF has a number of agents, analysts, and prosecutors who are assigned to the HKFTF and work full time for the task force, as well as agents, analysts, and prosecutors who do not handle Katrina fraud matters exclusively. In the case of both Task Forces, agencies have designated agents assigned to investigate fraud cases in the field although those agents are not permanently assigned to either task force.

- d) Why has DoJ responded so differently to the allegations of fraud and abuse related to contracting in Iraq by comparison to the allegations of fraud and abuse related to Hurricane Katrina?

Response: The Department of Justice works closely with the appropriate investigative agencies to ensure that the law enforcement response fits the particular situation. In the cases of Hurricanes Katrina, Rita, and Wilma, and the wars in Iraq and Afghanistan, the Department has made the investigation and prosecution of fraud a priority and will continue to do so, as addressed above.

**QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR EDWARD M.
KENNEDY TO BARRY SABIN DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION U.S. DEPARTMENT OF JUSTICE
MARCH 27, 2007**

The Department of Defense, through the Joint Contracting Command –Iraq/Afghanistan (JCC- IIA), used indefinite delivery/indefinite quantity (IDIQ) contracts to purchase pistols for Iraq. The Army's Tank and Automotive Command (TACOM) used full and open competition to procure pistols to supply the Afghans. The delivery orders under the IDIQ contracts have all been "name brand only" contracts where the military has specified the manufacturer and model number of the weapon. In contrast, TACOM has specified nearly identical requirements and then used full and open competition to buy pistols for Afghanistan. The JCC-IIA has purchased thousands of Austrian manufactured Glock pistols for Iraq while the full and open competition used for Afghanistan has resulted in Smith and Wesson, a domestic manufacturer based in Springfield, Massachusetts winning the competitively awarded contracts. In April 2006, the JCC-LFA issued a sole source solicitation for Glock pistols. In response to a letter from the Chief Executive Officer of a domestic manufacturer requesting full and open competition, the contracting officer wrote in an email dated May 11, 2006 that "the Glock pistol is the weapon of choice for the Iraqi Security Forces and is the requirement to be sourced." Following receipt of the email from the contracting officer, a domestic manufacturer of pistols protested to the Government Accountability Office (GAO). The Army requested that the protest be considered in an express manner in accordance with 4 C.F.R. 521.10 due to the ongoing Iraq War. On May 31, 2006, the contracting officer canceled the solicitation for the handguns. In a letter dated August 8, 2006, Deputy Assistant Secretary of the Army Ballard wrote that the solicitation was canceled because of the misspecification of the model by the Iraqi Security Ministries (the initial solicitation was for the Glock 17 model, but should have been for the Glock 19 model). The letter further explained that JCC-IIA decided to solicit the Glocks from already existing IDIQ contractors who had previously gone through the full and open competition. A company in based in Georgia eventually won the order to supply 29,000 Austrian made Glock 19 pistols to Iraqi Police Forces.

Please provide a complete and detailed explanation of the purchasing of these 29,000 Glock pistols for the Iraqi Security Ministry. Please clarify why the Army is taking the position that the initial solicitation of the Glock 17 model as the "weapon of choice" was later characterized as a "mistake." Did the acquisition of these pistols fully comply with the provisions of the Buy American Act and other domestic preference laws, since the contract went to a foreign manufacturer while an American company was prevented from bidding American made products? Did the military fully justify and obtain all necessary approvals for the "brand name only" acquisition prior to purchasing the weapons?

Response: This question requests information about policies adopted by the United States Army. DoJ does not have the information necessary to respond to this question. We would respectfully refer you to the Department of Defense.

**SENATOR ARLEN SPECTER: QUESTIONS FOR DEPARTMENT
OF JUSTICE DEPUTY ASSISTANT ATTORNEY GENERAL
FOR THE CRIMINAL DIVISION BARRY SABIN
MARCH 27, 2007**

1. Do you believe that Congress needs to pass any new criminal penalties to hold private contractors accountable?

Response: The National Procurement Fraud Task Force oversees a Legislative Committee, which is co-chaired by General Service Administration (GSA) Inspector General Brian Miller and DHS IG Richard Skinner. This Committee is working to develop proposed legislation that would address the issue of enhanced criminal penalties for private contractors. We will be happy to work with the Senate Judiciary Committee on these issues.

2. You have had the opportunity to review Senator Leahy's legislation on war profiteering.

- a. Do you support it?
b. Why, or why not?

Response: "As you are aware the Department transmitted our views to the Committee on S. 119 by way of a letter to Chairman Leahy, dated March 28, 2007." 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, we are concerned that enactment of 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 that 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 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 a 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, § 5332 (bulk cash smuggling), Title 41, Section 51 *et. seq.* (the Anti-Kickback Act), and Title 18, §§ 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, the following amendments to the general fraud statutes may provide options for eliminating some of 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 are adequately defined).
- United States Code Title 18, Section 1956 (money laundering) could be amended by listing certain general fraud statutes (*e.g.*, 18 U.S.C. §§ 1031 and 41 U.S.C. § 51, *et. seq.*) as “specified unlawful conduct.”
- United States Code Title 18, Sections 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 by including an explicit provision for extraterritorial jurisdiction.

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

If the Committee proceeds with the enactment of S. 119, the Department 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. We offer the following examples:

- In Section (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 any future legal challenges.
- In Section (a)(1), the meaning of “within the jurisdiction of the United States” is unclear. We recommend adopting language from United States Code Title 18, Section 1031 (a), which is more specific in that it links the illicit conduct to a prime/sub “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 United States Code Title 18, Section 7(9).

- Section (a)(1) imposes an additional element of proof which would complicate our prosecutions. The proposed provision includes the term “willfully” even though other statutes in Title 18 such as bank fraud, wire fraud, mail fraud, and major fraud against the United States, among others, 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 United States Code Title 18, Section 1348, seems to create a higher burden of proof for the government than would be necessary in order to effectively address this type of criminal conduct.
 - Paragraph (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.
 - Paragraph (a)(1)(B)(i) appears to be unnecessarily vague. The provision makes it a crime “to falsify, conceal, or cover up by any trick or scheme a material fact.” Yet, it is unclear to what the material fact must pertain. Perhaps (a)(1) can 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 paragraph (a)(1)(B)(i).
 - Section (b) provides for “extraterritorial Federal jurisdiction.” Although the Department is not necessarily opposed to this provision, the Department is concerned that such a provision might have the unintended consequence of undermining the Department’s efforts in applying extraterritorially the general statutes, which do not contain such a provision, but which Circuit Courts have held could be extraterritorially applied 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 may consider including in S. 119 a provision for conspiracy or attempt.
 - We recommend that United States Code Title 18, Section 2516 (c) (authorization for wire interception) be amended to include S. 119 as a predicate for authorization of wire interception.
3. This hearing has shown several documented instances of fraud. Yet, CBS News has noted that “So far a few individuals have been charged, most from a single case, and a few million dollars has been paid back. After 3 1/2 years of war, not a single criminal case has been filed against any large corporation doing work in Iraq.”

a. Is this criticism correct?

Response: The Department of Justice has taken an aggressive, proactive leadership position to help ensure that taxpayers' dollars from the public fisc are used for the purpose to which they were 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 in both civil and criminal matters.

The Department of Justice has established a unified and coordinated approach to combat procurement fraud and has devoted a panoply of resources and expertise to this important mission. The Criminal Division's Fraud Section, Public Integrity Section, Asset Forfeiture and Money Laundering Section, and Office of International Affairs 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 seeks to recover taxpayer dollars stolen through procurement fraud by assisting in the swift and comprehensive use of seizure warrants and forfeiture remedies, while the Office of International Affairs assists the Division and the U.S. Attorneys' Offices in securing evidence from foreign governments and in extraditing defendants.

Attorneys from the Criminal Division work closely with their colleagues in the Antitrust Division, who 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 are not alone in their efforts. 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 and product substitution, and bribery and corruption statutes. These actions often result in the recovery of significant funds.

There are more than 70 federal attorneys who are involved on either a part-time or a full-time basis in investigating or prosecuting fraud and corruption cases associated with our efforts in Iraq, Afghanistan, and the Global War on Terror. To date, these attorneys have handled approximately 100 investigations or cases. Those 100 matters include 25 individuals whom the Department has charged criminally, 16 of whom have been convicted, while the remaining 9 have charges pending against them. Additionally, the FBI has assigned approximately 40 special agents and 10 intelligence analysts to investigate these and other related matters. Descriptions of some of the charged criminal cases.

- On March 9, 2006, Philip Bloom, a U.S. citizen who resided in Romania and Iraq, pleaded guilty to conspiracy, bribery, and money laundering in connection with a scheme to defraud the Coalition Provisional Authority (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 federally funded contracts being awarded by the Coalition Provisional Authority - South Central Region (CPA-SC) so that all of the contracts were awarded to Bloom. The total value of the contracts awarded to Bloom exceeds \$8.6 million. Bloom admitted paying Stein and other public officials more than \$2 million in stolen money that were the proceeds of 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 February 16, 2007, Bloom was sentenced to 46 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.
- On February 7, 2007, U.S. Army Colonel Curtis G. Whiteford, U.S. Army Lieutenant 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 CPA - South Central Region (CPA-SC) in al-Hillah, Iraq. Whiteford, once the second-most senior official at CPA-SC, was charged with one count of conspiracy, one count of bribery, and 11 counts of honest services wire fraud. Harrison, at one time the acting Comptroller at CPA-SC who oversaw the expenditure of CPA-SC funds for reconstruction projects, was charged with one count of conspiracy, one count of bribery, 11 counts of honest services wire fraud, four counts of interstate transport of stolen property, one count of bulk cash smuggling, four counts of money laundering, and one count of preparing a false tax form. Wheeler, an advisor for CPA projects for the reconstruction of Iraq, was charged with one count of conspiracy, one count of bribery, 11 counts of honest services wire fraud, one count of interstate transport of stolen property, and one count of bulk cash smuggling.
- On August 4, 2006, Faheem Mousa Salam, an employee of a government contractor in Iraq, pleaded guilty to a violation of the Foreign Corrupt Practices Act for offering a bribe to an Iraqi police official. Salam is a naturalized U.S. citizen employed by Titan Corporation, and had been living in Baghdad, Iraq. According to court filings, Salam offered a senior Iraqi police officer \$60,000 for

the official's assistance with facilitating a purchase by a police training organization of approximately 1,000 armored vests and a sophisticated map printer for approximately \$1 million. On February 2, 2007, Salam was sentenced to three years in prison, two years of supervised release, and 250 hours of community service.

- On February 2, 2006, Robert Stein, Coalition Provisional Authority-South Central Region's (CPA-SC) Comptroller and Funding Officer pleaded guilty to conspiracy, bribery, money laundering, possession of machine guns, and being a felon in possession of a firearm in connection with the scheme to defraud the CPA. Stein also admitted to facilitating the purchase and possession of at least 50 weapons including machine guns, silencers, and grenade launchers with misappropriated CPA 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 November 13, 2006, four members of the California Army National Guard pleaded guilty to conspiracy charges related to their embezzlement from the U.S. Army while deployed in Iraq. The defendants, Jennifer Anjakos, Lomeli Chavez, Derryl Hollier, and Luis Lopez were members of the 223rd Finance Detachment, a unit of the California National Guard. Over \$340,000 of unauthorized pay was laundered through various domestic bank accounts.
- On October 11, 2006, former civilian Department of Defense (DoD) employee Bonnie Murphy was indicted for accepting unlawful gratuities and unlawful compensation in connection with contracting activity while stationed in Iraq. Murphy pleaded guilty on November 7, 2006, to accepting unlawful supplementation of her salary.
- On November 3, 2006, Samir F. Mahmoud, a former employee of a construction company that has contracts with the U.S. Air Force in Iraq, pleaded guilty to making a false statement stemming from an investigation into possible violations of the Anti-Kickback Act. Mahmoud was interviewed by federal agents regarding allegations of illegal payments and gifts offered to company employees in exchange for promised assistance in obtaining, retaining, or altering the Air Force contracts and subcontracts associated with the reconstruction of Iraq. In his guilty plea, Mahmoud admitted that he willfully made materially false statements by denying that he provided gifts to other company employees when he had offered and provided things of value to at least one company employee.
- On October 12, 2006, former civilian DoD employee Gheevarghese Pappen pleaded guilty to accepting illegal gratuities while detailed to the U.S. Army Area Support Group, Host Nation Office at Camp Arifjan, Kuwait, which supports U.S. military operations in Iraq. Pappen was sentenced to two years in prison.

- On August 25, 2006, in the District of Columbia, 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 Coalition Provisional Authority - South Central Region (CPA-SC) in Al-Hillah, Iraq. 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 Philip H. Bloom, a U.S. citizen who owned and operated several companies in Iraq and Romania in return for Bloom providing Hopfengardner with 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 over \$300,000 through various bank accounts in Iraq, Kuwait, Switzerland, and the United States. Finally, Hopfengardner admitted that he stole \$120,000 from the CPA-SC that had been designated to be used for the reconstruction of Iraq and smuggled the stolen currency into the United States aboard commercial and military aircraft.

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 Attorneys' offices have a wealth of procurement fraud expertise, and they are bringing that experience to bear in many high-profile and sophisticated procurement fraud cases. The LOGCAP Working Group, for example, which operates out of the U.S. Attorney's Office in the Central District of Illinois, has filed criminal charges against eight individuals for bribery and kickbacks associated with Iraq reconstruction efforts. LOGCAP III is a ten-year contract awarded to Kellog, Brown, and Root (KBR) in December 2001, and incorporates task orders issued by the US Army to support Operation Iraqi Freedom. These cases are briefly described below:

- Jeff Mazon, formerly a subcontracts manager for KBR, is charged with four counts of major fraud against the United States and six counts of wire fraud. He awaits trial, currently scheduled for September 2007.
- 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.
- Stephen Seamans, formerly a subcontracts manager for KBR, pleaded guilty to two charges, namely major fraud against the United States and conspiracy to commit money laundering. He was sentenced on December 1, 2006, to 12 months and one day in prison, three years supervised release, \$380,130 restitution, and a \$200 assessment.
- Glenn Powell, 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 violation of the Anti-Kickback Act. He was sentenced on

November 18, 2005, to 15 months in prison, three years supervised release, \$90,973.99 restitution, and a \$200 assessment.

- 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, two years supervised release, \$10,000 fine, \$133,860 restitution, and a \$1,400 assessment.
- Christopher Cahill, formerly the Middle East and India Vice President for Eagle Global Logistics, Inc. (EGL), pleaded guilty to one charge, namely major fraud against the United States. He was sentenced on August 30, 2006, to 30 months in prison, two years supervised release, \$10,000 fine, and a \$100 assessment. A civil settlement with EGL arising from the same facts resulted in a settlement of \$4 million on August 6, 2006.
- Ali Hijazi, a former employee of LaNouvelle General Trading and Contracting Company, a Kuwait subcontractor of KBR, was charged in an indictment with major fraud against the United States and wire fraud. He currently remains a fugitive from justice.
- Zubair Khan, formerly Manager of Operations, Iraq, for Tamimi, was charged by criminal complaint with witness tampering, conspiracy to commit money laundering, conspiracy to commit witness tampering, obstruction of justice, and making false statements. He has yet to be arraigned in the United States and remains in Kuwait.

b. How does the prosecution rate for fraud and waste in this war compare to other wars?

Response: The government does not have enough information at this time to comprehensively respond to this question. The government will continue to attempt to gather this data and report to the Committee.

4. Considering the increasing use, by the military, of private contractors:

- a. Should the government bar the outsourcing of some areas as exclusive government functions?

Response: Whether the outsourcing of particular functions should be barred will depend upon the nature of the particular function, the degree of government control and supervision that must be exercised over the function, and the particular circumstances and government resources that are available in a given situation.

In 1998, Congress enacted the Federal Activities Inventory Reform Act of 1998 (FAIR Act), which sets forth various general principles applicable to the kind of governmental functions that should or should not be performed by private entities under contract. *See* Pub. L. No. 105-270, 112 Stat. 2382 (1998). The FAIR Act established a process for identifying functions of the Federal Government that are not inherently governmental and made various provisions for contracting with private entities for the performance of such functions. Section 5(2)(A) of the FAIR Act defines the term "inherently governmental function" as "a function that is so intimately related to the public interest as to require performance by Federal Government employees." Sections 5(2)(B) and (C) of the FAIR Act provide more specific guidance on functions that constitute and do not constitute "inherently governmental function[s]" for purposes of that Act. OMB Circular No. A-76 provides further guidance on contracting with private entities, or outsourcing, for the performance of various Government activities and services. Although Circular No. A-76 generally encourages the Government to obtain commercial products or services from private or commercial sources where it is more economical to do so, the general rule does not apply where, *inter alia*, (a) "no commercial source is capable of providing the needed product or service"; (b) "Government performance of a commercial activity is required for national defense reasons"; or (c) "when contrary to law, Executive Order, or any treaty or international agreement." *Id.* para. 7(c)(1). In defining the "commercial activities" that are eligible for outsourcing, Circular No. A-76 specifies that "[a] commercial activity is not so intimately related to the public interest as to mandate performance by government personnel." Further details on activities deemed "inherently governmental" and nondelegable under Circular No. A-76 are described at Attachment A, pt. B, sec. 1(a) of the Circular (*e.g.*, "Binding the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise.")

- b. If some roles are outsourced, which ones should be outsourced? Should we outsource the detainment of prisoners, intelligence-gathering or interrogation?

Response: As to the first question -- which government roles should be outsourced as a general matter -- see the response to question 4(a). With respect to the detainment of prisoners, there is considerable and longstanding precedent, as well as statutory authority, for the operation of civilian prisons by private contractors. *See, e.g., Statutory Authority to Contract with the Private Sector for Secure Facilities*, 16 Op. O.L.C. 75 (1992) (Bureau of Prisons has lawful authority to contract with the private sector for secure prison facilities). With respect to the detention of military prisoners, there may be circumstances, such as the limited availability of military or government personnel or resources, where it is appropriate to use private contractors for some aspects of the operation or administration of detention facilities, although ultimate supervision and control by military and/or government officers must be retained. With respect to intelligence

gathering, there are numerous functions that may be appropriately performed by private individuals or contractors, as demonstrated by longstanding historical practice. In *Totten v. United States*, 92 U.S. 105 (1875), for example, the Supreme Court recognized that President Lincoln was "undoubtedly authorized" to contract with a private agent to gather intelligence behind the lines during the Civil War. As with comparable functions, appropriate contracting with private sources for intelligence gathering must include provision for adequate supervision and control by government officers. Similar considerations apply with respect to determining whether use of non-government personnel for interrogation, which is a form of intelligence-gathering, may be appropriate in particular circumstances.

- c. If some roles are outsourced, should American private contractors be barred from offering their skills to all other nations, or just some other nations, or not at all?

Response: The appropriateness or legality of United States private contractors offering their skills or services to foreign nations depends upon the nature of the skills or services, the relationship of the foreign state to the United States, and the particular circumstances in question. Clearly United States private contractors should be barred from providing skills or services to other nations that would provide aid and comfort to the enemies of the United States, *see* U.S. Const. Art. III, sec. 3, cl. 1; would result in injury to the national security of the United States; or would violate, for example, export control laws or regulations. Conversely, United States contractors may provide services to friends and allies of the United States that are conducive to the national security and welfare of the United States, and a general bar against such arrangements would be inappropriate and unsound.

- d. Should the US government bar the use of foreign private contractors for some roles?

Response: The legality or propriety of using foreign private contractors for the performance of various governmental roles will depend upon the nature of the function to be performed, the characteristics of the particular foreign contractor, and the surrounding circumstances. Some governmental functions, of course, must be performed or directed by Officers of the United States who have taken the constitutional oath, *see* U.S. Const. art. II, sec. 2, cl. 2, and art. VI, cl. 3, and it would be constitutionally, legally, and otherwise improper to use foreign contractors, either public or private, to perform or direct such functions. Moreover, at least the same limitations that apply to the outsourcing of government functions to American private contractors obviously all apply to outsourcing to foreign contractors.

5. What is the legal status of private contractors on the battlefield? Are they civilians or combatants? Are they lawful or unlawful combatants?

Response: The law of armed conflict contemplates that contractors may lawfully accompany the regular armed forces of a nation on the battlefield. For example, in international armed conflicts, the Third Geneva Convention Relative to the Protection of Prisoners of War explicitly provides its highest protection, due “prisoners of war,” to “persons who accompany the armed forces without being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labor units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany.” *See* Geneva Convention Relative to the Protection of War Art. 4.A.(4). In this way, the Geneva Conventions recognize a role for military contractors during a time of armed conflict and the need for treatment different from that afforded to civilians. This principle is also reflected in the Uniform Code of Military Justice, which reaches “persons serving with or accompanying an armed force in the field” in a time of war. *See*, 10 U.S.C. § 802(a)(10). While, depending on their activities, contractors accompanying armed forces may not be considered “combatants,” their presence is lawful, and they are entitled to special forms of protection under the law of armed conflict.

SUBMISSIONS FOR THE RECORD

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STATEMENT OF STUART W. BOWEN, JR.
SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION

BEFORE THE

UNITED STATES SENATE
JUDICIARY COMMITTEE

SIGIR INVESTIGATIONS IN IRAQ

Tuesday, March 20, 2007
Washington, D.C.

Chairman Leahy, Ranking Member Specter, and members of the Committee: thank you for this opportunity to address you today on the role of the Special Inspector General for Iraq Reconstruction (SIGIR) in investigating allegations of fraud, waste, and abuse within the U.S. reconstruction program in Iraq. I look forward to a productive exchange with the Committee regarding this important issue.

The title of this hearing asks the question whether enough is being done to combat fraud in Iraq. Two preliminary points will help put my answer to that question in its proper context. First, corruption in Iraq has been – and is – a problem of great enormity within Iraq’s government. I meet regularly with the Commissioner of Public Integrity (Iraq’s FBI analogue) on this issue, and he reported to me, during my most recent visit to Iraq – my 15th since being appointed – that his office has 2000 investigations ongoing of Iraqi officials, involving about \$8 billion in missing funds. During my trip, I also met with the President of Iraq’s Board of Supreme Audit (the GAO analogue), and he reported that corruption continues to plague virtually every ministry. The Deputy Prime Minister of Iraq previously has told SIGIR that corruption in Iraq “threatens the state.” And in our quarterly reports, SIGIR has characterized corruption in Iraq as “a second insurgency.”

By contrast, however, corruption within the U.S. program in Iraq, while egregious where we have found it, has been a relatively minor component of the overall effort, as measured against the total U.S. investment in Iraq. Waste, on the other hand, has been a significantly more serious issue. SIGIR’s audits have documented examples of this waste, and we are currently planning a forensic audit of the entire Iraq Relief and Reconstruction Fund, which will provide more detailed answers down the road.

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As to the question posed by this hearing, the answer is yes: there is always room for more accountability within government, and thus there is room to do more to pursue allegations of corruption in Iraq. Significantly, my Office continues to look for innovative ways to do more, as this testimony will substantiate. As a matter of record, SIGIR has received hundreds of allegations of criminal conduct; but, as a practical matter, proving those allegations to the requisite standard of review is difficult in the dangerous environment that has characterized Iraq for the past three years. SIGIR's investigative process depends on persons being willing to come forward with, and ultimately testify to, information about wrongful conduct. Electronic forensic tracking, the key tool in cracking fraud cases in the United States, is unavailable in Iraq, given that there is no extant electronic funds transfer capacity.

BACKGROUND

The Congress tasked SIGIR to provide oversight of the substantial U.S. investment in Iraq's relief and reconstruction. This includes \$21 billion appropriated to the Iraq Relief and Reconstruction Fund (IRRF), as well as fiscal year 2006 funds designated for the relief and reconstruction of Iraq. The FY 06 funds entail substantial allocations to the Iraq Security Forces Fund (total \$10 billion; SIGIR oversight, \$8.39 billion), the Commander's Emergency Response Program (total \$2.5 billion; SIGIR oversight, \$.708 billion), and the FY 2006 Economic Support Fund programs (total \$1.595 billion; SIGIR oversight, \$1.545 billion).

IMPACT OF SIGIR'S WORK

To date, SIGIR has:

- Produced 12 Quarterly Reports.
- Issued 82 audit reports, with 16 audits ongoing.
- Executed 80 on-site project assessments, with 12 ongoing.
- Opened over 300 criminal and civil investigations leading to 10 arrests, 5 persons indicted, 5 convicted, and 2 imprisoned. SIGIR continues work on 79 live investigations, and these investigations may involve one or more targets. Twenty-eight of SIGIR's investigations currently are being prosecuted by the Department of Justice (DoJ). Some of these cases are civil (5), but the most are criminal cases (23). The vast majority of these 28 cases at DoJ involve allegations arising from misuse of the IRRF.
- Produced two Lessons Learned Reports (one on Human Capital Management and the other on Contracting); with a third lessons learned report (on Program and Project Management) to be released on March 22, 2007.

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All of SIGIR's audits, inspections, quarterly reports, and lessons learned reports can be found at www.sigir.mil.

HISTORY OF SIGIR INVESTIGATIONS

SIGIR is a temporary organization initially created by the Congress in November 2003 as the Office of the Coalition Provisional Authority's Inspector General. I was appointed CPA IG on January 20, 2004, and immediately began to build the organization from scratch, beginning with 12 detailees. They included auditors, inspectors and a few investigators. The termination of CPA on June 28, 2004, activated CPA IG's sunset clause, and my office prepared to close down by the end of 2004. In late October 2004, however, the Congress acted to continue the CPA IG as the Special Inspector General for Ira Reconstruction and expanded SIGIR's oversight to the entire Iraq Relief and Reconstruction Fund (\$21 billion).

With this new jurisdiction, SIGIR immediately entered a rapidly increasing operational tempo, wherein our auditing, inspections, and investigations efforts quickly expanded. In December 2006, the Congress again acted to expand SIGIR's jurisdiction, passing the Iraq Reconstruction Accountability Act and thereby providing SIGIR with additional oversight responsibilities over all relief and reconstruction funds appropriated during FY 06. This Act also effectively extended SIGIR's organizational life through 2008. Under current law, SIGIR's term expires 10 months after 80% of relief and reconstruction funds within SIGIR's jurisdiction are expended.

Over the past three years, SIGIR's investigative footprint in Iraq and the United States has steadily expanded. SIGIR now has 19 investigators on staff, the majority of whom are former FBI agents. Eight of these agents are assigned to Baghdad, with the balance working cases from Arlington, Virginia. The Baghdad agents regularly travel across Iraq and within the region, pursuing leads and interviewing sources.

SIGIR has the largest number of fraud investigators in Iraq (eight), with one of those regularly deploying to Kuwait. The United States Army's Criminal Investigative Division/Major Procurement Fraud Unit has three agents in Iraq (and five in Kuwait); the Department of Defense Inspector General has two agents in Iraq (and one in Kuwait); and the USAID Inspector General has one agent in Iraq. SIGIR is unaware of any other agencies with fraud investigators deployed to Iraq or Kuwait.

SIGIR investigations have resulted in the following convictions and indictments:

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- On March 9, 2006, Philip Bloom, a U.S. citizen, who resided in Romania and Iraq, pleaded guilty to conspiracy, bribery, and money laundering in connection with a 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 bids for federally-funded contracts awarded by the CPA-South Central Region (CPA-SC) 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 over \$2 million from proceeds of the fraudulently awarded contracts and an additional at least \$2 million in stolen money from the CPA. On February 16, 2007, Bloom was sentenced to 46 months in prison and two years of supervised release. Additionally, he was ordered to pay \$3.6 million in restitution and forfeit \$3.6 million in assets.
- On February 2, 2006, Robert Stein, the former CPA Comptroller and Funding Officer in Hilla, Iraq, pleaded guilty to conspiracy, bribery, money laundering, possession of machine guns, and being a felon in possession of a firearm. Stein was the primary co-conspirator with Bloom, funneling numerous fraudulent contract payments to Bloom in exchange for kickbacks and bribes. Stein also admitted to facilitating the purchase and possession of at least 50 weapons, including machine guns, gun barrel silencers and grenade launchers with misappropriated CPA funds. On January 29, 2007, Stein was sentenced to nine years in prison and three years of supervised release. Additionally, he was ordered to pay \$3.6 million in restitution and forfeit \$3.6 million in assets.
- On February 7, 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 the Bloom-Stein scheme in Hilla, Iraq. Whiteford, who was Stein's deputy in the comptroller's office, was charged with one count of conspiracy, one count of bribery and 11 counts of honest services wire fraud. Harrison, at one time the acting Comptroller at CPA-SC who oversaw the expenditure of CPA-SC funds for reconstruction projects, was charged with one count of conspiracy, one count of bribery, 11 counts of honest services wire fraud, four counts of interstate transport of stolen property, one count of bulk cash smuggling, four counts of money laundering and one count of preparing a false tax form. Wheeler, an advisor for CPA projects for the reconstruction of Iraq, was charged with one count of conspiracy, one count of bribery, 11 counts of honest services wire fraud, one count of interstate transport of stolen property and one count of bulk cash smuggling. Morris, who worked for Bloom as a middle-man in the criminal scheme, was convicted of one count of conspiracy and 11 counts of wire fraud. Driver, who is Harrison's husband, was indicted on four counts of money laundering.
- On August 25, 2006, Bruce D. Hopfengardner, a Lieutenant Colonel in the United States Army Reserve, pleaded guilty to conspiracy to commit wire fraud and money laundering in connection with the Bloom-Stein scheme. In his guilty plea,

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Hopfengardner admitted that while serving as a special advisor to the CPA-SC, he used his official position to steer contracts to Philip H. Bloom, a U.S. citizen who owned and operated several companies in Iraq and Romania. In return, Bloom provided Hopfengardner with various things of value, including \$144,500 in cash, over \$70,000 worth of vehicles, a \$2,000 computer and a \$6,000 watch. Hopfengardner and his coconspirators laundered over \$300,000 through various bank accounts in Iraq, Kuwait, Switzerland and the United States. Finally, Hopfengardner admitted that he stole \$120,000 of funds designated for use in the reconstruction of Iraq from the CPA-SC and that he smuggled the stolen currency into the United States aboard commercial and military aircraft.

- On February 16, 2007, Steven Merkes, a former U.S. Air Force Master Sergeant working for the Department of Defense in Germany, pleaded guilty in U.S. District Court for accepting illegal bribes from Phillip Bloom. Merkes accepted the bribes in exchange for furnishing Bloom with sensitive contract information prior to awarding contracts to Bloom. Merkes faces 12 – 18 month incarceration, conditions of supervised release and restitution orders by the Court.
- On August 4, 2006, Faheem Mousa Salam, an employee of a government contractor in Iraq, pleaded guilty to a violation of the Foreign Corrupt Practices Act for offering a bribe to an Iraqi police official. Salam is a naturalized U.S. citizen employed by Titan Corporation and was living in Baghdad, Iraq. According to court filings, Salam offered a senior Iraqi police officer \$60,000 for the official's assistance with facilitating the purchase by a police training organization of approximately 1,000 armored vests and a sophisticated map printer for approximately \$1 million. On February 2, 2007, Salam was sentenced to three years in prison, two years of supervised release and 250 hours of community service.

A key component of SIGIR's strengthened investigative program over the past two years has been the strategic development of investigative task forces that enable synergistic collaboration among law enforcement agencies pursuing Iraq fraud cases. SIGIR formed the first task force in spring 2005. This initiative, the Special Investigative Task Force on Iraq Reconstruction (SPITFIRE), combined the efforts of SIGIR with investigative assets from the Internal Revenue Service, the Department of Homeland Security's Office of Immigration and Customs Enforcement, the Federal Bureau of Investigation, and the Department of State's Office of Inspector General.

SPITFIRE succeeded in effectively pursuing the investigation of the Bloom-Stein conspiracy, which is the largest case broken by SIGIR to date. It uncovered a criminal scheme in Hilla, Iraq, involving millions of dollars in fraudulent contracting, bribery, and kickbacks. Eight persons have been indicted to date as a result of this investigation and two are in prison.

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The other major and more recent task force initiative is the International Contract Corruption Task Force (ICCTF). The ICCTF's Joint Operations Center (JOC) became operational at SIGIR headquarters in Arlington, Virginia, on October 2, 2006. SIGIR and five other agencies established the ICCTF:

- MPFU, U.S. Army CID
- Department of State IG Criminal Investigations Directorate
- U.S. Agency for International Development IG
- DCIS
- Federal Bureau of Investigation

The purpose of the ICCTF is to develop leads and sources for fraud cases in Iraq by gathering intelligence and disseminating information regarding criminal allegations. It will provide analytical and target linkage data response reporting for use by all partner agencies. When fully functioning, the ICCTF will reduce travel time and expense, eliminate case overlap, and provide valuable analytical case support for agents operating in Iraq. The ICCTF will also determine and make recommendations regarding prosecutorial jurisdiction and venue. The ICCTF is also designed to facilitate the smooth transition of investigations upon SIGIR's eventual termination.

To date, the ICCTF's JOC has enabled the effective sharing of target information and case intelligence among the federal law enforcement community engaged in Iraq investigations. The JOC is producing a steady flow of federal law enforcement action the fruits of which will become known over the next several quarters.

As part of the ICCTF, the FBI has assigned eight significant SIGIR criminal investigations to FBI field offices throughout the country. Further, as part of a unique federal law enforcement arrangement, the FBI has agreed to run investigative leads for SIGIR, even before task force acceptance of investigations. The FBI's commitment to share resources at U.S. field offices and at legal attachés around the world will add great value to SIGIR criminal investigations originating in Iraq and Kuwait.

SIGIR is also a member of DoJ's National Procurement Fraud Task Force, participating regularly in the International Working Committee (IWC). The IWC is a valuable link between federal law enforcement agencies and the DoJ. It facilitates discussion concerning funding for corruption/fraud investigations, prosecutorial venue, extraterritorial jurisdiction, liaison with DoS and foreign governments, and coordination with legal attachés.

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SIGIR is actively pursuing other forms of potential punitive actions against contractors who allegedly have engaged in wrongful conduct in Iraq. Accumulating evidence of criminal fraud in Iraq is a challenge due to the high threat environment and the disinclination of persons to come forward because of the potential threat to their lives. Thus, SIGIR is generating a robust administrative action program using the corporate suspension and debarment powers available through the Department of the Army's Procurement Fraud Branch. Such administrative action can, among other things, strip parties who commit misconduct of their access to security clearances and restricted employment settings. This important initiative will enable SIGIR to hold wrongful contractors accountable. To date, the Procurement Fraud Branch has suspended 14 individuals and companies based on allegations of fraud and misconduct connected to Iraqi reconstruction and Army support contracts. In addition, 12 other individuals and companies have been recommended by SIGIR for proposed debarment to the Procurement Fraud Branch.

SIGIR investigators also work closely with the DoJ Commercial Litigation Section, Civil Division, pursuing civil remedies against individuals and companies. Along these lines, SIGIR continues to work with the MPFU on suspensions and debarments of individuals and companies. DoJ is supporting SIGIR with sufficient prosecutorial support and that support is increasing. SIGIR works directly with DoJ prosecutors in coordinating investigative strategies.

Pursuant to the authority granted SIGIR by the Inspector General Act of 1978, SIGIR has issued a number of subpoenas seeking information from contractors and others relevant sources to investigative leads. Additionally, SIGIR recently requested from selected contractors data regarding the internal investigations and audits. The Congress should consider requiring government contracts to include a clause that provides the US Government with access to these records.

THE PROPOSED WAR PROFITEERING ACT

SIGIR is a strong proponent of any legislation that strengthens efforts to punish fraud, waste, or abuse of funds in Iraq and elsewhere. SIGIR will coordinate fully with the DoJ in enforcing this Act should it become law.

CONCLUSION

Pursuing allegations of criminal fraud in Iraq has been a high priority for me ever since I was appointed Inspector General three years ago. And I remain committed to ensuring that SIGIR continues its rigorous investigation of fraud allegations in Iraq. SIGIR's robust oversight efforts to date have doubtlessly helped deter fraud. But I know that there

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remain criminals yet to be caught. SIGIR will do everything in its power to do more to deter crime and to uncover and prosecute those who have taken advantage of the difficult situation in Iraq to criminally enrich themselves..

March 20, 2007



Hold for Release
Expected 9:30 a.m.

Statement
of

Mr. Thomas F. Gimble
Acting Inspector General
Department of Defense

before the
Senate Judiciary Committee

on

"Combating War Profiteering:
Are We Doing Enough to Investigate and Prosecute
Contracting Fraud and Abuse in Iraq"

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 last November to Iraq and Qatar, reminds me of the importance of my 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 I 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 150 OIG personnel providing oversight on the \$463 billion in DoD supplemental funds 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: (1) establish an in-theater oversight presence, (2) expand oversight coverage of funds that are predominantly being executed in the United States, and (3) improve interagency coordination and collaboration to minimize duplicative efforts within the oversight community. First, we established an audit field office in Qatar under sponsorship of the Commander, U.S. Central Command, which is also where

his forward deployed base is located. We use Qatar as a hub from which teams deploy into Iraq, Kuwait, and Afghanistan. We currently have five auditors assigned to the Qatar office. 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 such as the Commander's Emergency Response Program. Separately, 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. Additional audit teams are planned to review reset of ground vehicles and equipment in Iraq. Also, we currently have two investigators in Kuwait, and two investigators and eight auditors in Iraq, some of whom are the initial staff for our established in-country presence in Iraq. In addition, we have two advisors stationed in the International Zone in Baghdad. Second, as of March 2007, we have initiated 22 ongoing audits staffed with about 123 auditors on issues that pertain to the Global War on Terror, including Operation Iraqi Freedom. Third, we are establishing a Joint Planning Group on oversight activities in the Southwest Asia Region so that oversight work by 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 Relief, and the Combatant Commands Inspectors General can better coordinate and deconflict oversight activities in the region.

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, Qatar, in Southwest Asia. Recently, through coordination with the Commanding General, Multinational Force-Iraq, we have established our second forward deployed field office in Southwest Asia, at Camp Victory in Iraq. We continue working towards increasing our presence in other Southwest Asia locations, specifically in Afghanistan and Kuwait, before the end of this year.

In the meantime, our organization continues to actively conduct audits, investigations, inspections, and intelligence oversight in the Continental United States (CONUS) and Southwest Asia that supports 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 Inspector General personnel in Southwest Asia to obtain the essential documentation or evidence to evaluate audits issues, allegations, or other claims. Each OIG component, Audit, Investigations, Inspections and Evaluations, and Intelligence, is actively involved in oversight efforts in Iraq as well as Afghanistan.

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 of two to three agents 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 four special agents to the theater – two special agents are assigned to Iraq and two special agents are assigned to 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 83 investigations into areas such as corrupt business practices; the loss of U.S. funds through contract fraud; and the loss of Iraqi 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 conducting 56 investigations related to the war effort (war profiteering, contract fraud, and contract corruption); 15 investigations are being conducted by four DCIS special agents in the Iraqi Theater. The remaining 41 investigations are being conducted by 31 special agents in CONUS and Germany-based DCIS offices.

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 contractor 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 taskforce 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, U.S. Army Criminal Investigations Division Major Procurement Fraud Unit, Department of State Office of the Inspector General, Agency for International Development Office of the Inspector General, Federal Bureau of Investigation, and the Special Inspector General for Iraq Reconstruction.

The ICCTF will staff and operate a Joint Operations Center at SIGIR Headquarters. The Joint Operations Center will create a more formal case-coordination cell and criminal intelligence capability in order to achieve maximum interagency cooperation to successfully prosecute fraud and corruption cases in Iraq. All participants have acknowledged that the ICCTF is a joint operation and all are partners in the operation of the task force. Accordingly, the mission and objectives of the ICCTF will be a shared responsibility of the participating agencies. Cases and criminal intelligence will be shared without reservation and statistical accomplishments will be reported jointly. The agency heads or their designees meet regularly to collectively provide policy, direction and oversight.

In addition, DCIS has initiated a project and committed resources to review paperwork 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 detect fraud involving payments made by the U.S. Army to support the war effort in Iraq. This is expected to be a long-term effort and DCIS is working with the FBI 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. While the project is still in its beginning stages, several questionable transactions have been discovered and referred for further investigation.

Since the Global War on Terrorism 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. Ten DCIS investigations with adjudication fall within the prohibited activities of the legislation sponsored by Chairman Leahy, the War Profiteering Prevention Act of 2007.

In total, these investigations 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, eight U.S. persons and one foreign person were convicted of felony crimes, resulting in a combined fourteen and one-half years of confinement and nine years of probation; two individuals and one company were debarred from contracting with the U.S. Government; 17 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, \$322,000 was levied in fines and penalties, and \$3,500 was forfeited.

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 business. 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 recently agreed to host the next Joint Staff and Combatant Commands Inspector General Conference, which will be held in April 2007. Further, the first meeting of the Southwest Asia Joint Planning Group will coincide with the Joint Staff and Combatant Commands Inspectors General Conference. It is our intent that this joint planning group will enhance supportive dialogue and minimize or eliminate operational constraints in gaining access to the theater of operation, which may potentially delay delivery of results of high-level interest.

Interaction with Department of Justice

The National Procurement Fraud Task Force (NPFTF) partnered with the Department of Justice with the Inspectors General offices across the federal government, with the purpose of identifying and litigating cases of fraud.

The NPFTF includes the FBI, the Department of Justice Inspector General and other 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 Task Force's mission is to increase coordination and strengthen partnership among all Inspectors General, law enforcement, and the Department of Justice to more effectively fight procurement fraud; assess existing government-wide efforts to combat procurement fraud; increase and accelerate civil and criminal prosecutions, and administrative actions, to recover ill-gotten gains resulting from the procurement fraud; and to educate and inform the public about procurement fraud.

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, Investigations and Policy Oversight, and Data Mining.

Proposed Legislation

As part of our statement, we were requested to comment on S.119, the "War Profiteering Prevention Act of 2007." The stated purpose of S. 119 is to strengthen the tools available to Federal prosecutors in order to combat war profiteering. While this legislation does not directly affect the operations of Inspectors General or Federal criminal investigators, in general, I believe that providing prosecutors with additional tools to combat criminal activity can be useful.

Operational Constraints

Operational constraints, such as travel restrictions, impact oversight efforts including the DoD Inspector General. Operational tempo requirements and the

anticipated surge of warfighters 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. Nonetheless, our in-country presence to conduct adequate oversight is imperative.

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.

Statement
United States Senate Committee on the Judiciary
Combating War Profiteering: Are We Doing Enough to Investigate and Prosecute Contracting Fraud and Abuse in Iraq
March 20, 2007

The Honorable Patrick Leahy
United States Senator , Vermont

Statement Of Chairman Patrick Leahy
Chairman, Senate Judiciary Committee
Hearing on "Combating War Profiteering: Are We Doing Enough
To Investigate and Prosecute Contracting Fraud and Abuse in Iraq?"
March 20, 2007

Efforts to combat war profiteering have a history going as far back as the practices themselves. During the Civil War, President Lincoln fought against war profiteers, denouncing them as "worse than traitors." He pushed for the first federal laws curbing this abuse. In World War II, President Roosevelt spoke out against "war millionaires" who made excessive profits exploiting the calamity of war. President Truman, when he served in the Senate, crossed this country holding now-famous public hearings to expose gross fraud, waste and abuse by military contractors. As we observe this week the fourth anniversary of the war in Iraq, we also must recognize that we continue to face war profiteering in that conflict. As Iraq Study Group Co-Chair Lee Hamilton testified before this Committee just a few weeks ago, contracting fraud and abuse significantly undermine the current efforts in Iraq.

Our Nation has sent nearly half a trillion dollars to Iraq with few or no controls over how that money has been spent. The Bush Administration has chosen to use private contractors in this war to a greater extent than at any time in our history. This trend has raised the cost of this military action by untold billions. Predictably, these actions by the Bush Administration have led to widespread fraud, waste and abuse in Iraq, on a scale that may be unprecedented in our history.

The Inspectors General before this Committee today have reported that billions of dollars spent in Iraq are unaccounted for and may have been lost to fraud or other misconduct. These Inspectors General have opened hundreds of investigations into fraud, waste and abuse in Iraq, Kuwait, and Afghanistan involving illegal kickbacks, bid-rigging, embezzlement, and fraudulent over-billing. These investigations have uncovered crimes committed by employees of the largest government contractors in Iraq, including Kellogg, Brown & Root, a wholly owned subsidiary of Halliburton. Many of these matters involve abuse of the now infamous "cost-plus" and "no-bid" contracts so often used by the Bush Administration to award huge sums to those with close ties to this Administration.

Despite these investigations and mounting evidence of fraud, the Administration has committed precious few resources to investigate and prosecute those who have illegally exploited this war for profit. It is as if the Department of Justice is allergic to demanding the accountability that the American people deserve when it comes to how taxpayer funds have been misappropriated.

Regrettably, the earlier rubberstamp Congress attempted to limit the investigation of fraud in Iraq and to shut down the office of the Special Inspector General for Iraq Reconstruction. I am pleased that better sense prevailed and the inspector general's authority was reinstated after the people spoke last November.

During the nearly four years of war, the Department of Justice has failed to move aggressively enough in prosecuting fraud in Iraq. As we sit here today, the Inspectors General before us have more than 70 open and active investigations in contracting fraud and abuse in this war, but the Justice Department has only brought six criminal cases involving fewer than 20 individuals over the last three years. Private whistleblowers have filed numerous civil claims involving Iraq fraud under the False Claims Act. That is the federal law first used by President Lincoln to combat war profiteering – a law which was reinvigorated by Senator Grassley and Congressman Berman during the procurement scandals of the 1980s. Despite these many cases filed by whistleblowers, the Justice Department has yet to intervene publicly in a single case – not one. In fact, to date the Justice Department has largely chosen not to proceed against the corporations involved in war profiteering and contracting abuse.

As reported to our Committee by the Department of Justice, the crimes in many of these criminal cases were committed by employees of Kellogg, Brown & Root, one of the largest contractors in Iraq, and a division of Halliburton. In these cases, KBR employees have admitted to receiving kickbacks, inflating costs, embezzling money, and stealing millions from the American people. But so far, the Justice Department has brought no formal case, civil or criminal, against KBR, or Halliburton, and KBR has not returned the profits made from the criminal acts of their employees.

Just last week, we learned that Halliburton will move its CEO's headquarters outside the United States to Dubai, and Halliburton apparently plans to spin off KBR. Perhaps Halliburton and its CEO are more comfortable in Dubai than in the United States. But whether they are or not, their move is an insult to the U.S. soldiers and taxpayers who paid the tab for their no-bid contracts and endured their overcharges for all these years.

I introduced the War Profiteering Prevention Act of 2007, S.119, on the first day of this new Congress. The bill has 18 cosponsors, including Senators Feinstein, Feingold, Schumer and Durbin, who are members of this Committee. By this measure we hope to clarify that no one anywhere in the world can defraud this country during a time of war -- and get away with it.

This legislation makes acts of war profiteering a specific crime, and more importantly, this bill reaches all contracting fraud whether it occurs in this country or not and whether it is committed by a U.S. citizen or not. Our legislation applies to all reconstruction and relief activities overseas to make sure no one can exploit our country in times of emergency. I have been proposing versions of this bill since 2003, when it did pass the Senate. Unfortunately, this crucial provision was stripped out of the final version of a bill by a Republican-controlled conference committee.

At our hearing today, we will hear whether this Administration continues to use "cash" contracts in Iraq, which create obvious risks for fraud and abuse. As we all know, the Special Inspector General has already disclosed that this Administration disbursed through the Coalition Provisional Authority more than \$10 billion in cash in Iraq, with little or no accounting of how the money was spent. And yet, it appears that this practice has continued in many contracts in Iraq. The Inspectors General here today are sifting through millions of documents reflecting these cash disbursements and finding evidence of fraud. "Cash" contracts create incentives for fraud.

We will also explore why some cases have not been prosecuted, because of legal disputes about the extraterritorial reach of U.S. law. That is a problem our War Profiteering bill would solve.

I hope to get a better understanding of why the Justice Department has been so slow to act and has not treated these problems as priorities. During the first three years of the war, the Department of Justice undertook no specific initiatives to combat fraud in Iraq, and it appears that there were few, if any,

investigators, other than the Special Inspector General, to pursue allegations of fraud in Iraq. Only in the last six months has the Department now formed a task force on these problems, and that task force has not brought any new cases. I hope and expect that the Department of Justice can do better in the future. At the suggestion of our Ranking Member, we invited the Attorney General to come or send a representative. He has chosen to designate a deputy assistant from the Criminal Division rather than anyone from the leadership of the Department.

Congress has sent billions upon billions of dollars to Iraq with too little accountability and too few financial controls. More than \$50 billion of this money has gone to private contractors hired to guard bases, drive trucks, feed and shelter the troops and rebuild the country. Too much of this money is unaccounted for, and many of the facilities and services that these funds were supposed to pay for are still nonexistent. We in Congress must ask: Where did all the money go? We need to press for more accountability over the use and abuse of billions of taxpayers' dollars sent as development aid to Iraq.

A new law to combat war profiteering in Iraq and elsewhere is sorely needed and long overdue. Although there are anti-fraud laws to protect against the waste of U.S. tax dollars at home, no law expressly prohibits war profiteering or expressly confers jurisdiction on U.S. federal courts to hear fraud cases involving war profiteering committed overseas. The bill which once again is before our Committee would criminalize overcharging taxpayers to defraud and to profit excessively from a war, military action, or reconstruction efforts. It would also prohibit any fraud against the United States involving a contract for the provision of goods or services in connection with a war, military action, or for relief or reconstruction activities. This crime would be a felony, subject to criminal penalties of up to 20 years in prison and fines of up to \$1 million, or twice the illegal gross profits of the crime. The bill also prohibits false statements connected with the provision of goods or services in connection with a war or reconstruction effort. This crime would also be a felony, subject to criminal penalties of up to 10 years in prison and fines of up to \$1 million, or twice the illegal gross profits of the crime.

Our bill also addresses weakness in the existing laws used to combat war profiteering, by providing clear authority for the Government to seek criminal penalties and to recover excessive profits for war profiteering overseas. These are strong and focused sanctions that are narrowly tailored to punish and deter fraud or excessive profiteering in contracts, both at home and abroad.

The message sent by this bill is clear: Any act to exploit the crisis situation in Iraq or elsewhere overseas for exorbitant gain is unacceptable, reprehensible, and criminal. Such deceit demeans and exploits the sacrifices that our military personnel are making in Iraq and Afghanistan, and around the world. We cannot in good faith ask the American people to sacrifice for reconstruction efforts that allow some to profit unfairly. When U.S. taxpayers have been called upon to bear the burden of reconstruction contracts – where contracts are awarded in a system that offers little competition and even less accountability – concerns about wartime profiteering are a grave matter. Combating war profiteering is not a Democratic issue or a Republican issue. Rather, it is a cause that all Americans can support.

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Department of Justice

STATEMENT

OF

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

BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING
COMBATING WAR PROFITEERING: ARE WE DOING ENOUGH TO INVESTIGATE
AND PROSECUTE CONTRACTING FRAUD AND ABUSE IN IRAQ?

PRESENTED ON
MARCH 20, 2007

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

**Before the
Committee on the Judiciary
United States Senate**

**Concerning
Combating War Profiteering: Are We Doing Enough to Investigate and Prosecute
Contracting Fraud and Abuse in Iraq?**

March 20, 2007

Thank you for the opportunity to be here today to discuss 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. The Task Force is also in the process of considering potential regulatory and legislative changes like those proposed in the War Profiteering Act, which will, if effectuated, enhance our prosecutive efforts to protect the government against those who would cheat or mislead it in the procurement of products or services, but has not yet made any formal recommendations.

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 Saddam Hussein and other 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 also has increased 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 fisc 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 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. These 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 not alone. 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 and 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.

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 Global War on Terror (GWOT). This task force is led by a Board of Governors derived from senior agency representatives who operate all major GWOT 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 March 15, 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. Sixteen of these individuals have been convicted (seven are awaiting sentencing). The other nine individuals have charges pending either through 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. 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. 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 over \$300,000 through various bank accounts in Iraq, Kuwait, Switzerland, and the United States. Finally, Hopfengardner admitted that he stole \$120,000 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, 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 federally-funded contracts being awarded by the CPA-SC 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 incorporates 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:

- o 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.

- 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 United 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 have empowered and energized the Inspector General community. First, the USA Patriot Act conferred additional law enforcement powers 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 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, chaired by David Williams, the Inspector General of the U.S. Postal Service;
- Legislation, co-chaired by Richard Skinner, the Inspector General of the Department of Homeland Security, and Brian Miller, the Inspector General of GSA;
- Information-Sharing, also chaired by Brian Miller;
- Intelligence, co-chaired by Ned Maguire, the Inspector General of the Office of the Director of National Intelligence, and Peter Usowski, Inspector General of the National Geospatial-Intelligence Agency;
- Grant Fraud, chaired by Glenn Fine, Inspector General for the Department of Justice;
- Private-Sector Outreach, co-chaired by Harold Damelin, Inspector General of the Department of Treasury, and Eric Feldman, Inspector General of the National Reconnaissance Office; and
- International Procurement Fraud issues, including the wars in Iraq and Afghanistan, chaired by FBI Assistant Director CID Chip Burrus.

The Legislation Committee will consider regulations and legislation, like the War Profiteering Act, that may assist in the investigation of procurement fraud. The Legislation Committee has already met but has not yet made any formal recommendations to the Task Force regarding the War Profiteering Act or any other proposed legislation.

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 two 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 are in the process of drafting mission statements and strategic plans to accomplish their respective missions. We are currently aware of more than 60 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. 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.