

Senate Democratic Policy Committee Hearing

“An Oversight Hearing on Army Retaliation against Whistleblowers Who Objected to Iraq Contracting Abuses”

Friday, September 16, 2005
9:30 a.m. - 11:00 a.m.
538 Dirksen Senate Office Building

Transcript

DORGAN:

We'll call the hearing to order this morning, I'm Senator Byron Dorgan. I'm joined by my colleague Senator Mark Dayton and we believe others will join us.

Today we hold a hearing of the Democratic Policy Committee. This is the sixth hearing in a series of hearings that we have held over a couple of years on the subject of government contracting practices, particularly with respect to waste, fraud, and abuse of government contracts that are going to companies on no-bid sole source contracts to do work in Iraq and other areas.

This is a particularly timely hearing given that Congress has just approved over 60 billion dollars in funding for the response to Hurricane Katrina. The president spoke last evening about the needs – the additional funding needs that will be required for our citizens in the Gulf region to recover.

Speaking for myself, I would say that our country understands that need and I join the President in saying to the people of that region that you are not alone. This country will reach out and help and help lift you up. But even as we do that – as we commit substantial money to do that, the question is how is that money going to be spend and by whom, and will it be spent effectively, or will there be waste, fraud, and abuse by contractors for which there is no oversight?

Now let me go through just a couple of charts that persuaded me to call this hearing once again. The first is a clipping from the *Wall Street Journal*, and this describes why I'm concerned about the future as well as concerned today about some of the things that have happened in the past. The *Wall Street Journal* has a headline: “No-Bid Contracts Win Katrina Work: White House uses practices criticized in Iraq for rebuilding hurricane-related jobs.” “The Bush administration is importing many of the contracting practices blamed for spending abuses in Iraq as it begins the largest and costliest rebuilding effort in US history. The first large-scale contracts related to Hurricane Katrina, as in Iraq, were awarded without competitive bidding and

using so-called cost-plus provisions that guaranteed contractors a certain profit regardless of how much they spent.”

Second, *Time* magazine: “Living Too Much in the Bubble?” “By late last week the administration aids,” it says, “were describing a three-part comeback plan. The first, spend freely, and worry about the tab and consequences later. ‘Nothing can sap the wounds like money’ said the official, who helped develop the strategy.”

That deals with what is going to happen in the months and years ahead with respect to tens and perhaps hundreds of billions of dollars to respond to this natural disaster called Katrina.

This is October 30, 2004. The Army extended a Halliburton company troop support contract over the objections of a top contracting officer. This was a no-bid contract given to the Halliburton Corporation. This news report says “the Army extended the support contract over the objections of a top contracting officer.

I want to go through these charts just to show you the story that persuaded me to hold this hearing once again. The Army extended the contract over the objections of a top contracting officer. “Corps official to help FBI in Halliburton deal probe: Whistleblower says commanders kept her in the dark on fuel contract. The Justice Department is conducting a criminal probe into the potential fuel overcharges, which Pentagon auditors claimed to have amounted to about 61 million dollars.” Once again, “Corps official helps FBI in Halliburton deal probe.”

Next chart: “Pentagon aided Halliburton, official charges. The company’s no-bid contracts in Iraq are cited as examples of favorable treatment. A top Army Corps of Engineers official charged Monday that Halliburton was able to receive no-bid contracts for work in Iraq because of repeated assistance by the Office of the Secretary of Defense. She called the multiple interventions ‘the most blatant and improper contract abuse I have witnessed during the course of my professional career.’”

And finally, “Army contract official critical of Halliburton pact is demoted. A top Army contracting official who criticized a large non-competitive contract with the Halliburton company for work in Iraq was demoted Saturday, August 29, 2005.”

It is unbelievable to me that those who have the courage to stand up and blow the whistle on practices that are unfair, that don’t follow the rules, practices that billed the American taxpayer, practices that in some cases simply reflect waste, other cases perhaps fraud, certainly abuse, that those whistleblowers, those people with the courage to do that, suffer consequences: demotion, loss of job, a whole series of consequences that send a signal to others in this government of ours, “stand up and tell the truth, stand up and speak out when you see something wrong, you’ll pay a price for it.” That makes me furious to see this sort of thing happen.

I happen to know, the person, by the way, who it was demoted, is with us today to testify. I happen to know that the Inspector General of the Department of Defense asked the Corps of Engineers to take no action until its investigation was finished. Despite that, you see, they have

decided that the person with the courage to stand up and blow the whistle on waste, fraud, and abuse was demoted. Well what do we do about all that?

We expose those who take these kinds of actions against those who are looking after the taxpayers' interest. We, through this hearing, ask the Defense Department, the Pentagon, the Corps of Engineers to do the right thing.

Today we're going to hear from Bunnatine Greenhouse, who rose to become the highest ranking civilian official in the Corps of Engineers, through a career during which she was always judged to have done excellent work and therefore promoted throughout that career. Until she began to raise questions about procedures and practices that were used in the Pentagon, in the Army Corps of Engineers to award big contracts without bidding, sole source contracts to certain companies without following the rules.

Bunnatine Greenhouse began to call officials on that and they didn't like it. In fact they even began to change the rules, or avoid the rules, or break the rules by doing things outside of her purview despite the fact that she had the authority and the responsibility to approve certain contracts. And when that didn't work, and finally when Ms. Greenhouse went public, they decided "enough," we will simply demote her. You could either be fired, or leave, or retire, and we'll demote her and they have demoted her. That is unfair. It is fundamentally wrong for this to have happened in our government. We're not going to let this continue without exposing it.

We will hear today from another whistleblower witness, Christy Watts, the former chief contracting officer at the Army Corps of Engineers in the Louisville, Kentucky district office. During her employment with the Army Corps, Ms. Watts was ordered not to communicate with Ms. Greenhouse, who was her superior at the time, about questions Ms. Watts was raising about possible contracting abuses. She was ultimately terminated by the Army Corps of Engineers after she attempted to expose contracting irregularities in the Louisville district. My understanding is that there has been a settlement paid to Ms. Watts – I'll ask you a bit about that – by this Federal Government for that termination.

I tell you, I have no patience for people who are engaged in this sort of retribution against federal workers who have the courage to stand up and speak out against abuse. And I want accountability. I want the people who do this to be accountable for their actions. If any place in this government, we send a signal to workers, that when they see among the trillion or two trillion dollars spent, or in these cases in contracts, billions, tens of billions, and hundreds of billions of dollars spent, if they see waste, fraud, and abuse, and are willing to report it, they ought to be rewarded; they ought to be lauded, not demoted, not fired. And those who decide that people who tell the truth are a threat somehow ought to be held accountable. And it is my intention to do that. So, we will hear from these witnesses.

I'm joined by my colleague Senator Dayton who has to leave, and I would very much like to end this hearing at 11 o'clock today, at which point there is a prayer service beginning at 11 today, and I want to end the hearing – we'll be able to do that I'm sure, we have three witnesses, Ms. Greenhouse, Ms. Watts, and Mr. Yukins, who is a contracting expert, a professor,

and so we will have three witnesses. Let me ask Senator Dayton for his statement. I will then ask Senator Levin for a comment, and then we will begin with you Ms. Greenhouse.

DAYTON:

Thank you, Mr. Chairman, for holding this hearing, for your vigilance on behalf of protecting the American taxpayer and also trying to assure that the commitments America makes, whether it be to our neighbors to the south of our states, or in Baghdad and Iraq, are honored and carried out – to honor the American people and to protect the American taxpayer. I joined with you last time Ms. Greenhouse graced us with her presence at this hearing, and I share your alarm and your dismay that you have continued to suffer the misfortunes that you have there. I want to note, and ask, Mr. Chairman, that after my remarks, it be inserted in its entirety for the record, editorial in today's *New York Times* by Mr. Paul Krugman, and he, I think, captured the essence of the Bush Administration's post-Katrina response.

I'm quoting now Mr. Krugman: "it calls for waivers on environmental rules, elimination of capital gains taxes, and the private ownership of public school buildings in the disaster areas." It goes on and says: "how is it possible that discretionary government spending can take place on such a scale, and not create equally large-scale corruption?" And he goes on to point out that it is possible: "it is possible to spend public dollars honestly even in emergency situations as the administration of Franklin Roosevelt proved during the 1930s."

How did that happen? He writes: "the answer is that the New Deal made almost a fetish out of policing its own programs against potential corruption." In particular FDR created a powerful 'division of progress and investigation' to look into complaints of malfeasance in the WPA. That division proved so effective that a later congressional investigation could not find a single serious irregularity that had been missed. This commitment to honest government wasn't a sign of Roosevelt's personal virtue," although I tend to disagree with that respectfully, "but it reflected a political imperative: FDR's mission in office was to show that government activism works."

And by contrast, unfortunately, the mission of too many right-wing ideologues is to try to prove that government can't work, that it can't do its job well. And unfortunately when some of them get either elected or appointed to public office, they go out to prove their theory correct by misappropriating funds, by destructing programs, and then when their ineffectiveness is demonstrated, they turn around and point the finger and say "see, that proves our point. Government can't do it properly, can't do it well."

And again, I fundamentally disagree. I think it is possible. I think with your oversight, Mr. Chairman, here, and the efforts, if we had them, bipartisan, and if we could do this through the regular committee structure of the Senate, it would be far more effective, because it would send a message to all involved that this is not a partisan concern, that honest government and the honest expenditure of public funds is a bi-partisan, non-partisan concern.

It should be our priority, all of us. I regret that we have to have this kind of hearing in this setting, although I certainly don't fault you for that, and I am grateful for doing so, and I thank again our three distinguished witnesses for appearing. Thank you Mr. Chairman.

DORGAN:

Senator Dayton, let me make the point as I have previously, we hold the hearings in the policy committee because the authorizing committees, at the request of Senators, have refused to hold oversight hearings. Oversight is a responsibility of the United States Senate. And the authorizing committees don't want to do it? We're doing it. And once the authorizing committees begin to do it, this committee won't do it. Senator Levin.

LEVIN:

First, let me thank you Senator Dorgan for a series of hearings you have held on contracting practices. Your hearings have shone a spotlight on a series of contract abuses, including sole sources contract, questionable contract charges, deficiencies in contract performance, and inadequate contract oversight. You've done everything you can to fill the vacuum, which has been left by feeble congressional oversight. And that's just what you two have been talking about in the last moment, and this kind of oversight needs to be done by the regular committees. It has not been done despite many of our requests that they do this kind of oversight, and so you have attempted, and with some success, to fill that vacuum, and I commend you for your tenacity in doing so.

One of today's witnesses, Ms. Greenhouse, is a career DoD employee, who rose to become the senior civilian contracting official at the Army Corps of Engineers. In early 2003, Ms. Greenhouse expressed concern about the decision of senior Army Corps officials to award a five-year, sole source contract to Halliburton for the reconstruction of the Iraqi oil industry. Several months later, she expressed concern about a decision to exempt Halliburton from the requirement to provide cost or pricing data to justify the high prices that it was charging to import fuel into Iraq.

After complaining through Department of Defense channels without effect, Ms. Greenhouse decided to go public with her concerns, testifying here in June. Before the end of summer, Ms. Greenhouse had been demoted, removed from her job, and kicked out of the senior executive service.

The Whistleblower Protection Act unequivocally prohibits federal agencies from taking any action against an employee because of any disclosure which the employee reasonably believes evidences a violation of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, or an abuse of authority. Ms. Greenhouse's bosses may not agree with her views on the Halliburton contract, but they do not have the right to retaliate against her for expressing hers. Beyond that, I find it extraordinary this administration has repeatedly failed to hold a single senior official accountable for any number of real failings, including intelligence failures

leading up to 9/11, intelligence failures related to Iraq's weapons of mass destruction, the failure to anticipate the insurgency in Iraq, the failure to prepare adequately for a major natural disaster on the Gulf coast – all those failures, nobody's been held accountable at a senior level. The administration has no problem demoting a senior official who speaks honestly and forthrightly about contract abuses. Apparently the only failure that can get you fired or demoted in this administration is failing to support the party line. Again, I congratulate and commend you, Senator Dorgan, for your commitment to this cause, and I look forward to the testimony of our witnesses.

DORGAN:

Senator Levin, thank you very much. I do want to take just another two minutes to set the stage. This isn't about disgruntled federal workers. This is about a very serious problem of contracts given to companies without oversight and therefore, waste, fraud, and abuse. We have had other people sit at the witness tables. Let me tell you what they have said in the other six hearings.

A woman who worked for Bechtel said, "Pentagon officials, up and down the chain of command ignored federal laws and regulations and the procedures that normally ensure fair play...In 12 years, I never saw anything approaching it."

We've had people sitting at the witness table that talked about – much of it, most of it about Halliburton, but some with respect to other contractors as well. The ordering of towels – he held up towels to be ordered for the troops, but they were told you have to order a towel with the company logo on it so they could double the price. The ordering of 50,000 pounds, 25 tons of nails by Halliburton, but the wrong size, so where are they today? Laying in the sands of Iraq. \$85,000 new trucks have a flat tire. What do you do? Leave it by the side of the road to be torched. How about a fuel pump that is plugged, what do you do? Leave it by the side of the road to be torched because it's just an \$85,000 new truck and the taxpayers paying for it and the taxpayer pays whatever we charge, doesn't matter.

We had a man named Rory sit at this table just weeks ago and said they're serving – and he worked for Halliburton – they are serving food that's outdated with expired stamps on the food and the supervisor – it doesn't matter – feed the food to the troops.

It's unbelievable what's going on. Just unbelievable. Nobody seems to care. I've called some of the top people at the Pentagon about these issues to ask them "Are you going to allow this to continue? Are you going to send troops to Iraq and ask them to wear this country's uniform and then say it doesn't matter if a contractor is serving you expired food?"

The same witness said the convoy that comes through and is attacked and finally shows up, it gets through the attack, what they were told to do was to go in and find the shells, the spent bullets and the fragments that were in the food and get rid of it and then serve the food to the soldiers and by the way, save the good ones as souvenirs for the supervisors at Halliburton – save

the good bullets that were still in the food, once you get them out save them as souvenirs, but the guy said – they said – just go ahead and serve the food to the soldiers. That's what's going on.

And I haven't even talked yet about the major areas of abuse, I'm just talking about nobody seems to care. And by the way, Rory, who testified before this committee at the last hearing we held, said this. He worked for Halliburton. He said he was told and all others were told, you may not talk to a government auditor. If they come around here, if they come snooping around to figure what we're doing, what we're spending, how we're spending it, if you talk to them, you'll be fired number one, or number two, the alternative is, you'll be sent to an active area of Iraq where there is active fighting, one of the two. Talk to them you're fired, or we're shipping you out someplace else where it's more dangerous. That's what's going on. This is not just about these two whistleblowers today. It's about systemic waste, fraud, and abuse and nobody seems to give a damn.

And I wish we didn't have to hold these hearings, but we will, until and unless there's some accountability in Congress for billions and billions and billions of dollars of the taxpayers' money that's being shoveled out the door, in the name of reconstruction, in the name of replenishing military accounts by contractors that we have substantial evidence are now engaged in waste, fraud, and abuse. We have criminal investigations going on at the Justice Department, and yet what happens? The same companies get just a slap on the wrist and a pat on the back and give you another contract. And the people who raise questions about it, how are they treated? Well, they're told they're going to get fired. They're going to get demoted, shame on you for speaking up and speaking out about waste. As far as I'm concerned, they deserve our praise and not our threats, and we want to hold people accountable for all of this. We want the American taxpayer to believe that this government works.

So, Bunnatine Greenhouse, you rose to become the highest ranking civilian official in the Army Corps of Engineers. You were in charge of the contracting procedures and the approval process for contracts worth billions, tens of billions of dollars as I understand it, you have testified here previously, and since that time, at least in part because of your testimony, my understanding is you have been demoted. Now why don't you proceed with your testimony and then we will have the testimony of Christy Watts, and then we will ask questions of the two of you, and then we will have questions of Mr. Yukins.

GREENHOUSE:

Thank you.

DORGAN:

You're welcome.

GREENHOUSE:

My name is Bunnatine H. Greenhouse, and I was the Principal Assistant Responsible for Contracting ("PARC") for the United States Army Corps of Engineers until I was removed from that position on August 27, 2005. I was removed because I steadfastly resisted and attempted to alter what can be described as casual and clubby contracting practices by the U.S. Army Corps of Engineers Commanders, and because I presented testimony before this body on June 27, 2005.

At that time, I reported to this Committee that the worst contract abuse I witnessed during my entire professional career, which spans over twenty years, concerns contracts that were awarded to Halliburton subsidiary Kellogg Brown & Root ("KBR"). I further explained that the Restore Iraqi Oil ("RIO") contract remained under the control of the Office of the Secretary of Defense, when the Army Corps of Engineers had been designated as the executive agency for that contract, and that the control by the Office of the Secretary of Defense was improper. Three days before I voluntarily appeared before this Committee, it was conveyed to me by the acting General Counsel of the U.S. Army Corps of Engineers that appearing before you would not be in my best interest. I left that meeting knowing that, if I went forward, I would be the recipient of retribution.

The day I appeared, the Army Inspector General ("IG") released to the Secretary of the Army, Dr. Francis Harvey, a memorandum prepared by the Commander of the Corps, Lt. General Stock, requesting that I be removed from my position as PARC and removed from the Senior Executive Service. This timing of this release is no coincidence. Three weeks after I appeared here, Secretary Harvey authorized my removal as PARC and from the Senior Executive Service.

I would like to note that, however much I insisted that the Command comply with legal contracting requirements, I worked equally as hard ensuring that all Commanders were always able to timely and fully execute their mission to the full satisfaction of their customers.

I was disheartened when I received word of my removal, because at that time I was in the process of completing a new Defense Base Act ("DBA") insurance program for the Department of Defense. This program, which I created and brought into existence, will save taxpayers hundreds of millions of dollars in unreasonable pass-through insurance costs, and will increase the participation of small businesses that were precluded from participating in Iraq and Afghanistan campaigns due to the high cost of DBA insurance. During the past year, I single-handedly wrote the draft and final DBA insurance solicitations, responded to all questions from industry, conducted an industry forum with more than fifty insurance brokers in attendance, and engineered the procurement process to its final stages. The rush to remove me just before the DBA insurance project could come to completion is a clear indication that my removal was triggered, in large part, by my prior appearance before this Committee.

What is particularly disturbing is that the decision to remove me broke a written commitment made to my counsel on October 22, 2004, by the then-Acting Secretary of the Army that my allegations would be forwarded to the Department of Defense Inspector General for investigation, and that no adverse action would be taken against me until a sufficient record concerning my disclosures of contract abuse was available. No such record exists. At no time

prior to my removal, nor since, have I been interviewed by the Department of Defense Inspector General or anyone else associated with the Department of the Army or the Department of Defense concerning the serious allegations of contract abuse pertaining to Halliburton subsidiary KBR that I brought to the Department of the Army's attention in the letter forwarded by my counsel to the then-acting Secretary of the Army, Les Brownlee, on October 21, 2004.

I began my tenure as PARC in 1997 when Lieutenant General Joe Ballard, the 49th Commander of the Corps, selected me for the position. I was selected not only because I was by far the most qualified, but also because General Ballard was searching for a new head of contracting who would have the fortitude to confront a longstanding "good old boys" network of commanders who routinely engaged in casual and clubby contracting practices. I was up to the challenge, and I did all that I could to bring the Corps' contracting and procurement function into compliance with the federal law. The comments made by the Corps' Deputy Commander and Commander after my first year at the job, as reflected in my performance review, include that: I had "no equal when it comes to technical issues;" I was "not timid – has the fortitude to tell it as it is;" my "ethics are above reproach;" and that I had "potential for bigger and better things."

Two years later, my performance evaluations stated that I had: "Unquestionable loyalty, integrity, and dedication to mission; not timid – has the fortitude to tell it as it is; courage in convictions, candor, sage judgment and passions, always evident;" "Unsurpassed as a contracting and acquisition expert and professional advisor. Has no equal when it comes to technical, acquisition strategy and business cases analyses;" and "Excellent potential for future senior acquisition positions in DoD."

However, with the ramp-up of the Iraq war and the arrival of Major General Hans Van Winkle as Deputy Commander and Lt. General Flowers as the Commander of the Corps, my efforts to obtain full compliance with contracting requirements and to do away with the clubby and casual contracting practices were no longer the skill set wanted by the new Command. I was viewed as being "too powerful," and I was an obvious hindrance to the inappropriate contracting style that was the hallmark of the "good old boys" command structure that had dominated the Corps since its inception. Simply put, the "good old boys" were going to do what it took to remove me from my position.

My attempts to remedy the hostile work environment in the contracting organization began in 2002, when I was initially forced to file a complaint with the Agency's Equal Employment Opportunity Office. Some of the hostility I faced was clearly tied to my gender and race, and was undoubtedly due to the fact that I was perceived as being too powerful within a white male-dominated command structure. I initiated a proceeding before the Army's EEO Office in 2002. The law required that my EEO case be heard within 180 days. But rather than comply, the Army's EEO Office unnecessarily delayed the commencement of any action for two years. The EEO process is still broken and has become a tool the Army is using to deny me the right to proceed with the investigation of my claims, including the claim that I am being discriminated against on the basis of having the courage to confront improper contract abuse. In February of 2005, I filed a conflict of interest complaint. In response, the Army halted the hearing process. However, to date, the Army has not even acknowledged receipt of the complaint. Instead, the entire EEO process was halted. No one has even bothered to call me or

my counsel to give us a status report. In short, the Army has denied me any meaningful avenue to review my allegations.

With the EEO process broken, I decided to write to Assistant Secretary of the Army Acquisition, Logistics, and Technology, Honorable Claude Bolton, Jr., advising him that a “hostile environment” had overtaken the U.S. Army Corps of Engineers’ procurement and contracting function. I did so on March 2, 2004. I advised Mr. Bolton that it was “important to you to note also that the strategy to undermine Procurement and Contracting leadership in the Corps is replete throughout the organization.” I advised Mr. Bolton that recent action to remove Christy Watts, the Chief of Contracting of the Louisville District, who was the most competent and dedicated contracting officer in the Corps, and that her planned removal demonstrated “that at no level in the Corps is it tolerated for the Contracting Leader to highlight issues that require correction for the benefit of the nation.”

I explained to Mr. Bolton that Ms. Watts was “one of the most talented and committed Chiefs of Contracting [who] has the fortitude to make sure that improprieties that she discovered were provided to her Commanders for correction,” and that her planned removal was improper. However, my letter fell on deaf ears. I was not even afforded a courtesy call acknowledging receipt of my letter, and the Army allowed one of its best contracting specialists, Christy Watts, to be run out of the Corps of Engineers. The entire contracting cadre witnessed what happened to Christy Watts, and there is no doubt that a chill was felt throughout the Corps’ entire contracting community.

Two weeks earlier, on February 12, 2004, I wrote to Honorable Reginald J. Brown, Assistant Secretary of the Army Manpower and Reserve Affairs, alerting him to a host of abusive and discriminatory actions that were being directed against me simply because I had the courage to do my job. I noted to Mr. Brown that the Army IG and the Army Corps of Engineers IG were repeatedly used as tools to discredit me and to provide a basis for my removal. A closed investigation was reopened, findings of wrongdoing were demonstrated to be false, and repeated “sensing sessions” and inspections were conducted as a part of the machinery the Command was using in its attempt to remove me from my office. I am not surprised that the Army IG released the memo to the Secretary of the Army on the very day I appeared before this Committee.

In my letter to Mr. Brown, I asked to be transferred because I realized there was no way for me to counteract the hostile environment I faced unless I was willing to compromise my insistence on compliance with contracting requirements, which I could not do and be loyal to my oath of office. So I stated to Mr. Brown:

Sir, I believe I have provided you insights into what is happening with me and the improprieties and harassment that I am experiencing as a senior leader trying to do my job and execute my mission for the best interest of the public trust. I hope that you can see also that there is nothing more that I can do to remove the hostile environment that I am presently working in at the U.S. Army Corps of Engineers. I believe for my best interest and for the great service that I want to continue to provide to the government, that I should be considered for reassignment out of the

Corps. Please advise me if regulations, in view of the situation that I have been placed in and the unfair evaluations, will permit a directed reassignment for me.

Mr. Brown likewise did not contact me, nor did he respond to my letter.

Finally, I would like to note that I received my SF-50 removing me from my position as PARC. However, while the regulations prevented my salary from being reduced, the Corps nonetheless unilaterally chose to reduce my annual pay by more than \$2,400. Additionally, the Corps included in the remarks of the SF-50: "No SES reinstatement rights," thereby prohibiting me from ever again being able to join the ranks of the SES.

If I may, I would like to propose a legislative fix. I urge members of Congress from both parties to fix the problem. On November 17, 2004, Mr. Bolton issued a memorandum on the functional independence of contracting officials. In this memorandum, Mr. Bolton acknowledges the need for contracting officers to have "a degree of independence" and recognized that whoever is responsible for preparing the employee evaluations has the power to influence the contracting officer. Mr. Bolton observed that "Contracting Officers and Contracting Specialists performance evaluations will continue to be done within their own career program channels [not through the Command channels of the contracting offices]. The only exception will be the performance evaluation of the Chief of the Contracting Office, which may be, when so designated, the Principal Assistant Responsible for Contracting." However, with respect to the Army Corps of Engineers, it is the Chiefs of Contracting and the PARC who need protection the most. Until the performance of the PARC and the Chiefs of contracting are evaluated within their career program channels, integrity over the Corps contracting organization will be lacking, and the public's confidence in the procurement and contracting process will continue to erode.

Finally, I would like to thank the outpouring of support I am fortunate to receive from around the Country. I cannot thank you enough for your support during this very difficult time in my life.

DORGAN:

Ms. Greenhouse, thank you very much. I'm going to ask Christy Watts to proceed as well and then we will have Professor Yukins and then we will have some questions. I know that my colleague Senator Levin will have to leave before the end of the hearing. Ms. Watts, your statement is about eight pages single spaced, which is, if you don't mind during your presentation if you could truncate that and summarize just a bit it would be very helpful to us. We do want to understand the texture of the full story here, and we are very pleased that you have come, so please just keep in mind, if you will, if you truncate that just a little bit it would be helpful to us.

WATTS:

Okay

DORGAN:

Let me thank you for joining us and say that you are the former contracting officer at the U.S. Army Corps of Engineers from the Louisville, Kentucky district office of the Army Corps of Engineers. As I understand it, your civilian supervisor, in fact, was Ms. Greenhouse in what they call "stovepipes" that you reported up and as the contracting officer in that district office your superior officer in that stovepipe was Ms. Greenhouse. You were ultimately terminated after you raised concerns about contracting abuses. And you filed a whistle blower protection suit, and my understanding is that the Corps at some point settled that suit with you. So thank you for being with us. Thank you for your courage to speak out, you may proceed.

WATTS:

My name is Christy Watts as you stated and I am the former Chief of Contracting for the United States Army Corps of Engineers, Louisville District. When I learned of the plight Ms. Greenhouse was suffering, I knew I had to come forward and disclose the lengths to which commanders in the Corps of Engineers are willing to go to silence contracting officers. I have firsthand knowledge of Ms. Greenhouse's role as the U.S. Army Corps of Engineers Principal Assistant Responsible for Contracting ("PARC"). She was the best PARC we ever had. She instilled in us that we had the right and responsibility to insert ourselves into the contracting process when commanders wanted to keep us out of the process. She demanded that the contracting process be transparent, fair and open to all. She was our role model, and she had our respect.

Like Ms. Greenhouse, I was forcibly removed from my employment with the Corps of Engineers because I repeatedly and loudly objected to the contracting activities.

I was employed by the Department of Defense for over 18 years, all in contracting, 12 of which were with the Corps of Engineers. My annual reviews for '94, basically, I'll summarize this, from '94 through to the year 2002, place me in the highest excellence category and contain some of the following comments: "extremely dedicated to the mission and her people... Always delivers on her commitments... Superbly competent both as an administrator and technical advisor... the best I have seen in the Procurement field, and enjoys limitless potential."

I arrived at the Louisville District in June 2001 as the Chief of the Contracting division. I had previously held the position of Chief of Contracting at two different Corps of Engineers Districts under six different commanding officers, all of whom acknowledged my performance was extraordinary. Soon after I arrived at the Louisville District, I realized that significant improper, illegal contracting practices had been ongoing at the District for a long period of time. I reported such contracting abuse to my District Commander's attention. When I attempted to raise contracting irregularities during an executive board meeting held at the District, Robert

Fuller, the Chief of Operations, blew up and began screaming at me. I then met privately with the District Commander and explained that the scope of contract irregularities I was uncovering was mushrooming.

On an annual basis, I was required to certify to the District Commander whether there were any material weaknesses. I concluded that the weaknesses existed and issued a detailed accounting of the material weaknesses related to the contract irregularities I had uncovered. However, the Commander failed to forward both my 2002 and 2003 certification of material weaknesses to Division Command, nor were they sent to Headquarters. In April of 2002, I met with the District Chief Counsel, Dale Holmes, to discuss at length the contracting irregularities. I explained to Mr. Holmes that the contracting irregularities constituted illegal activity and discussed with him the significance and wide-spread nature of the contracting abuse and stated that the illegality should be brought to the Department of Defense (“DoD”) Inspector General (“IG”) for investigation. Mr. Holmes stated that doing so could have adverse consequences for the District and that DOD should not be contacted.

In July of 2002, Col. Rowlette became the commander of the Louisville District. After I expressed my concerns over contract illegalities, Col. Rowlette removed me as a member of the District’s Board of Directors. In August 2002, I transmitted a three-page summary of the known contracting irregularities to my commander, Col. Rowlette, and deputy commander, Lt. Col. Fagan, requesting that I be authorized to initiate an Army Audit Agency (“AAA”) in order to get to the bottom of the problems. This request was denied.

By September 2002, I began to experience significant retaliation for attempting to uncover and correct contract abuses that had occurred in the District. On September 16, 2002, I was issued a counseling statement claiming my performance was lacking and I was called before the Deputy Commander that day. During the course of my counseling session, I was specifically told by the Deputy Commander that I was not free to consult with my contracting chain of command when I disagreed with the contracting position taken by the Command unless I obtained approval prior to that of the Command. I believe there is a recording of this conversation.

DORGAN:

My understanding is that the sound is not all that great, but we have a...I think we have a transcript of it.

**Transcript of Conversation Between
Contracting Officer Christy Watts and Army Corps Lieutenant Colonel (9/17/2002)**

LTC: You are not going outside our office of counsel. On a case by case basis you can go outside after you’ve cleared it through me or the Colonel ’cause...

Watts: Are you telling me that I can’t talk to my stovepipe without talking to you first? Is that what I’m hearing?

LTC: If you disagree with a legal opinion that our office of counsel has, no, you cannot go outside of our district. You don't go to your stovepipe unless you come talk to us about it and we will decide whether or not you can go outside the district.

Watts: So, are you saying a legal opinion is gospel?

LTC: I'm saying that a legal opinion is sufficient for you to do a contract or whatever.

Watts: So, you're saying that...what I just heard you say is that whatever legal says, we just have to sit down, shut up and sign it.

LTC: No, I didn't say that.

Watts: That is what I just heard you say.

LTC: ...If you disagree...

Watts: Please explain to me what you just said.

LTC: If you disagree...If you disagree with a legal opinion or legal sufficiency statement, then by a case by case basis you can bring it to me, the Colonel or Dr. Mullin, and we will tell you whether you can go outside the district.

* * *

Watts: I have a right to ask my stovepipe for guidance.

LTC: After you talk to the Colonel or me and we will make the decision because we are not going through this again...

* * *

Watts: So you're telling me when I can or cannot go ask my stovepipe for guidance.

LTC: That is exactly right, we are telling you that.

* * *

DORGAN:

Just for clarification, the reference to stovepipe is a reference to you going to your direct superior...

WATTS:

...in contracting...

DORGAN:

...in this chain of command in contracting.

WATTS:

Correct.

LEVIN:

Who was that?

WATTS:

That was LTC Richard Fagan, who was the deputy district commander at that time in Louisville district.

This, preventing me from freely contacting my contracting chain of command, was done in an effort to interfere with the independence contracting officers are required to exhibit, and was aimed at preventing me from providing business advice that the Command simply did not want to hear.

The level of distaste that commanders who are part of the “good old boys” network have for contracting officers who have the conviction to object to improper contract activity is captured in a memo the District Deputy Commander, Lt. Col. Fagan, sent from Iraq after he had learned I had to take sick leave due to health problems I began to experience as a result of the tremendous stress and hostility I was forced to work under. In that memo Col. Fagan states: “I guess that we can’t do [to Christy Watts] what I did when my mare broke her leg, can we?” The impropriety associated with the making of this comment by a superior officer, a white male tied in to the “good old boys” network, is obvious. Yet, no formal or informal disciplinary action of any kind was taken against Lt. Col. Fagan for making this statement.

I wish to also explain how I experienced undue influence as a contracting officer when my command attempted to obtain an unlimited warrant for use in Iraq.

On May 13, 2003, I was summoned to Col. Rowlette’s office to discuss the granting of an unlimited warrant to Joe Theobald, who the District planned to send to Iraq. Mr. Theobald was the former chief of contracting and was directly responsible for all of the illegal contracting actions I had uncovered. However, the protocol to obtain an unlimited warrant required the Command to obtain my concurrence. I advised the Command that I could not, in good conscience, grant an unlimited warrant to someone I knew to be responsible for a decade’s worth

of serious contract abuse, most of which the Command would not let me investigate. I had no alternative but to not concur to the request for the unlimited warrant. The Command then attempted to circumvent the requirement for my approval and sought to obtain approval without having to go to the PARC, Ms. Greenhouse. However, the warrant issue eventually went to Ms. Greenhouse. Ms. Greenhouse concluded that I “appropriately provid[ed] her statement of serious reservations about Mr. Theobald’s business acumen and judgment in correspondence to the issues that references validate that she and the District Counsel had to address within the first 6 months of her tenure and are still addressing.” Ms. Greenhouse went on to note that the “myriad of issues that were surfaced by Ms. Watts in her analysis of the health of contracting in the District should be enlightening for you as a Commander to ensure that the entire Project Management Team finds remedies therefore to ensure that these issues...are eradicated and not repeated. Some of the improprieties, even though validated by Counsel, appear not to have been aggressively fixed.”

I was summoned into a meeting at which time I was told that, if I failed to approve the warrant for Mr. Theobald, the Command would select one of my employees to go to Iraq and fire that employee when they refused to go. I was told that I could avoid this if I just approved the warrant for Mr. Theobald. This conduct on the part of Col. Rowlette, a commissioned officer in the United States Army, clearly demonstrates an attempt to engage in the undue influence of a contracting officer.

The mindset of the Command is further depicted in a memo issued by the Deputy Commander of the Louisville District, Lt. Col. Fagan, to the District Commander, Col. Rowlette regarding the Theobald warrant. This memo depicted Ms. Greenhouse as someone who could “set up” the Command in that she would “stack the deck” with inspectors who could make the Command “look really bad, if all the problems are found out that I think they will find.” The memo explains that “we actually had a pretty good workable solution until our contracting officer got involved” and that *the real issue was that the contracting officers could overstep the will of a commander*. The memo further states: “I am bothered by the command issues here. Commanders command, staff officers make recommendations to Commanders. We have a couple of staff officers, i.e., myself and Ms. Greenhouse, making decisions for the commanders.” In a separate memo, Col. Fagan stated that, with respect to the ability to grant or deny Mr. Theobald’s warrant, “one person, i.e. Ms. Greenhouse, should not have this much control.”

I would also like to explain how I was forced to sign documents I felt I could not sign in good conscience.

The Louisville District was in the process of procuring a half billion dollar-plus contract related to the Olmsted Dam project. I was the contracting officer for this procurement process until I objected to Col. Rowlette’s desire to modify the solicitation. He ultimately issued a written order directing me to change the solicitation when I was not prepared to do so. It was obvious that if I did not comply with his directive to sign the document, I would be summarily relieved of duty. So I did the only thing I could, I signed the document. At that point I found myself in a similar position to Ms. Greenhouse when she felt obligated to include a comment on document related to the Restore Iraqi contracts. Like Ms. Greenhouse, I chose to write a handwritten note next to my signature. I indicated that I was signing this document under duress. A

few weeks later I was removed as the contracting officer. Ultimately, I was placed on administrative leave pending my removal, at which time the contract was awarded without proper evaluation being performed. I further learned that the Commander was going to personally work out the funding issues with the contractor after award. This activity by a Commander was simply improper.

My removal from the Iraqi electrical infrastructure contract.

In November 2003, the District became responsible for a contract to repair the Iraqi electrical infrastructure that had been awarded to Halliburton subsidiary KBR. If I recall correctly, the value of the contract was around \$1.1 billion. As the Chief of Contracting for the District, I would function as contracting officer on all of the important contracting matters handled by the District. However, without any advanced warning, I was summoned into a meeting and told by my first line supervisor that I was being suspended for 5 days due to my handling of the Olmsted project, and that I was also being removed as the contracting officer over the Iraq contracts. I was removed from the Iraq contracts because the District Commander knew I would demand compliance with contracting requirements, and that my removal would alleviate the scrutiny that should have been applied.

I also wish to alert you to the Corps of Engineers' decision to interfere with my ability to contact the Office of Special Counsel with my concerns.

The plight I encountered as a whistleblower in the Corps of Engineers was nothing short of traumatic. For the first time in my life, I was forced to seek medical assistance to deal with stress. I continued to fight as long as I could. However, I eventually had little choice but to accept a confidential settlement agreement. Against my desire, the settlement agreement the Army Corps of Engineers required me to sign include a provision that prevented me from disclosing concerns to the United States Office of Special Counsel. Paragraph 14 of the agreement drafted by the Corps specifies:

“Watts agrees not to contact the Special Counsel with respect to matters arising out of her employment with the Louisville District or otherwise covered by this Agreement.”

I have concluded that the act of preventing me from communicating my concerns of contract abuse and unlawful activity freely to the Special Counsel is evidence of waste, fraud, abuse, and corruption. I believe I am required by Executive Order 12731, signed by President George H. W. Bush on October 19, 1990, to disclose this information, particularly after I received a request that I disclose such information by Senator Dorgan. My attorney, on my behalf, objected in writing to the inclusion of this language into the agreement. However, the Army Command insisted this term was essential before they would conclude a settlement with me and they refused to remove it from the final language. I had to accept if I wanted to settle my claim. Having been terminated, faced with having to sell my home, being unable to cover the costs of continuing to litigate my claims, I had little option but to settle my case on a condition that I agree not to bring my whistleblower disclosure to the attention of the Office of Special Counsel.

I had no financial motive or political gain that would cause me to put myself and family through the anguish, pain and abuse we endured in order to do all that I could to ensure the contracting activity complied with the letter and the spirit of the law. I am a life-long registered Republican who supports and voted twice for our President. I have been the recipient of numerous awards, including the *Department of Defense Productivity of Excellence Award* for my innovation in Contracting and have 17 years of exceptional performance ratings. If these issues I presented were not valid, why would I risk my career and subject myself to inhumane treatment for over 2 years? Why would the Command instruct that I could not seek advice and help from my contracting chain of command when I found it necessary to do so? And why would the Command insist that I not go to the Office of Special Counsel with my concerns?

Without question, the current command structure over the Army Corps of Engineers views contracting professionals as a drag on their ability to do what they want, and unless a contracting officer is willing to keep quiet, they can expect to be terminated.

I, like Ms. Greenhouse, have been the target of the senior management of the Corps of Engineers simply because I refused to ignore the blatant contracting abuses that are a habitual issue within the Corps of Engineers. These issues include the Halliburton story, yet go way beyond that and are systemic problems in the Corps of Engineers' way of "doing business."

One point I need to make very clear: in my 18 years in contracting, I had never, with any other company except Halliburton, been treated in such a demeaning and intimidating manner. When pointing out to Halliburton's personnel their contract non-compliances, I was threatened verbally and physically intimidated for performing my job.

If I may suggest a legislative fix, if I could draw a lesson from my experience with the Corps of Engineers, I would suggest that Congress consider removing the military commanders from the reporting process and performance reviews of the contracting officers in the Corps of Engineers. Congress has legislated in the past to protect the integrity of the procurement process. The integrity can be undermined when an unscrupulous few decide to circumvent the process, and then also have the power to punish those who try to uphold the law.

In conclusion, let me emphasize and encourage you to avoid placing the problems at the Corps of Engineers into a partisan context. The problems are systemic and have been occurring for decades – through both Republican and Democratic administrations. Please serve the interests of the American people and address this as an issue of right and wrong – nothing more, nothing less.

I thank you for your time and the opportunity to share my unfortunate experience with you.

DORGAN:

Ms. Watts, thank you very much for being with us. I do want to point out that in previous hearings...submitted a written question or set of questions to the Corps of Engineers asking for a response, so, we are trying very hard to allow both sides to be heard, but frankly, just as Ms. Greenhouse, you have indicated in your experience, we are not getting responses and that concerns me a great deal. I know that Senator Levin has another commitment this morning. I want to call on him to ask some questions before we go to Professor Yukins. Senator Levin.

LEVIN:

Mr. Chairman, thank you. First of all, relative to your comment, or, the last part of your testimony about your having to agree that you won't go to the Office of Special Counsel, as somebody who helped to author the Whistleblower Protection Act, it strikes me that that goes against the very purpose of the Whistleblowers Protection Act. And I don't know that off-hand without going back and looking whether there is a specific provision that prohibits any agency from, as part of a settlement or otherwise, prohibiting any employee from going to the Office of Special Counsel, but if there isn't such a provision, there surely should be such a provision. It seems to me it's obvious, but nonetheless, it's apparently not obvious, and we're going to check to see if it's already there, and if not, I'll try to amend that. That's a very important initiative and reform. You make reference to a three-page summary of the known contracting irregularities and I'm wondering if we don't already have a copy of that, could you submit a copy of that to us?

GREENHOUSE:

I certainly can.

LEVIN:

Do we have it already? Has that been submitted to us?

GREENHOUSE:

I don't believe so.

LEVIN:

That'd be good if you would also do that. And Ms. Greenhouse, and I wish I had more time here this morning, but I will follow carefully what questions and answers and comments also by you Professor Yukins come after I leave. Ms. Greenhouse, you make reference to a

commitment which was made to you in October of 2004 that there would be no action taken against you until, I believe, your testimony said there was an investigation by the IG or there was a record made of some kind. Who was that commitment made by?

GREENHOUSE:

It was made by the acting Secretary of the Army Les Brownlee, and that the DoD IG would do an independent investigation of the Army and provide that record of the allegations that were made.

LEVIN:

In addition to asking the Army Corps of Engineers to comment on this testimony, Mr. Chairman, I think specifically it'd be very useful to ask the Secretary of the Army, and the former acting secretary for that matter, about that specific commitment and to ask the Army IG 'where is that, what is the status of that investigation?'

GREENHOUSE:

...and it was the DoD IG...

LEVIN:

I'm sorry the DoD IG, not the Army IG, thank you, and also the EEO office that is supposed to act, and this will be my last question, but you're statement that they're supposed to act within 180 days, I believe you said...

GREENHOUSE:

That's correct.

LEVIN:

And then you also indicated, if I can find this, that the Army's EEO office, you said, delayed the commencement of any action for two years...

GREENHOUSE:

That's correct.

LEVIN:

Does that reference to any action by any investigation by them? In other words, if the hearing – it says here – the EEO case must be heard within 180 days, does that literally mean a hearing or does that mean they must begin their investigation within 180 days?

GREENHOUSE:

Once I've submitted the allegations, they were to have had a fact-finding session, you know, which was delayed until two years later, you know, before any type of investigation began.

LEVIN:

Mr. Chairman, with your permission, I'd like to specifically write them and ask them as to why that did not occur according to the requirement.

DORGAN:

We will do that.

LEVIN:

Again, I thank you Mr. Chairman for your tenacity on this.

GREENHOUSE:

...and literally the EEO process has just halted, you know, in the Army.

DORGAN:

Let me just say two things quickly before Senator Levin leaves, I did indicate at the start of this that the Inspector General had asked that there be no retribution, no action, that was in fact the acting Secretary of the Army at the time, is that correct?

GREENHOUSE:

The acting Secretary of the Army had made the statement to my counsel that no action would be brought against me, adverse action, until the DoD Inspector General...

DORGAN:

Let the record show that it was not the IG it was the acting secretary, and I do want to say before Senator Levin leaves that he is the ranking member on the Armed Services Committee, and has done an extraordinary job trying to follow all the leads and to make sure with respect to oversight of a substantial amount of money that's authorized to be spent for this country's defense, to make sure it is spent wisely.

There are two parts to this mission we've been on, one is to try to expose the waste, fraud, and abuse that too many people seem not to care about, expose it and see if we can stop it; the second is to deal with questions of what is happening to people that have the courage to speak out about it. These are the two pieces. But I do want to especially commend my colleague Senator Levin who has done extraordinary work, and I hope that we will continue to be able to do this. I will say that I was just on the phone, on Wednesday of this week, with one of the several top people in the Pentagon on this very issue, saying "you all need to not just look at this, but you need to investigate this, you ought to take this seriously." So we will continue to do that and continue also, to ask those who have different views to show up and express them, but the failure to be willing to do that, I think, tells us volumes in many ways.

GREENHOUSE:

And Mr. Chairman, I think it's important before Senator Levin leaves, he was asking a question of Christy Watts regarding her contracting stovepipe and who the district individual was speaking about in that stovepipe, that would have been the PARC, above the district, instead of Col. Fagan that Ms. Watts inadvertently mentioned as the person. Col. Fagan may have been the person who was speaking, but the stovepipe was the principal assistant responsible for contracting where that is my responsibility to give advice to the district since they are at the point where the rubber meets the road and doing the business on operational contracting.

WATTS:

That's correct.

LEVIN:

Do you agree with that because I was a little confused by that testimony as well, but that corrects it?

WATTS:

I misunderstood your question.

LEVIN:

I'm sorry that you were confused by my question. Thank you. I will read your testimony.

DORGAN:

I'm going to ask just a couple of questions and go to Professor Yukins and come back to some additional questions. Ms. Greenhouse, has the Inspector General's office made any attempt to interview you?

GREENHOUSE:

None whatsoever.

DORGAN:

None?

GREENHOUSE:

None whatsoever.

DORGAN:

That's unbelievable to me. You've not been interviewed? You've not been contacted by the Inspector General?

GREENHOUSE:

I have not.

DORGAN:

Ms. Watts, right at the end you talked about Halliburton, that deals with the contractor for which there's supposed to be oversight, you talked about threats and so on, describe that in just a bit more detail.

WATTS:

I have had several incidents both in my Alaska district contracting chief and the Louisville district. In Alaska, Halliburton, or Kellogg, Brown, and Root, who had the JOT contract at Ft. Richardson, were not meeting their small business goals. They had a 20% goal, they were only at 1.8% after four years in their contract. They wrote to me and asked for relief of those goals. And I wrote them back and said not only "no," but I want a plan in the next two weeks on how you intend to meet those goals, or according to the contract, I was going to start withholding liquidated damages which, at that point, was up to two million dollars.

DORGAN:

Goals are requirements, right?

WATTS:

Goals are requirements of the contract, they're part of the source selection process to get that contract.

DORGAN:

Right.

WATTS:

A few weeks later, I was in Washington, D.C. at the Corps of Engineers small business conference standing at my table talking to contractors, and two senior Halliburton officials came up to me, in the middle of the room, and started screaming at me, telling me that I was not allowed to do what I was doing. I had no business, and how dare I. I, at that time – I mean, they were in my face, they were basically right there on me. I asked them to please sit down and schedule a meeting for a later time. This was the inappropriate place to do that.

They continued on for several minutes, and at that time, General Ballard was standing across the room, and he had just had a presentation on contractors meeting their small business goals, and I looked at them and said, "Fine, let's go have this conversation with General Ballard and we'll see what he thinks." Amazingly, in six months, they were at 19.8% of their contract.

Another incident with them, in Alaska, the first time they had to compete for task orders under an indefinite delivery contract. At the end of the fiscal year, the Corps issues many, many task orders under those contracts. Halliburton actually did not win probably 99% due to being expensive and the cost. Their manager there in Alaska, at midnight, after the end of the fiscal year, calls me and starts yelling and screaming at me on the phone because they did not receive any of the contract awards.

Several further incidents in the Louisville district. Once again, Kellogg, Brown, and Root had sole source. They won the basic contract competitively then they had sole source task orders issued to them. One of the things George Yogaman, who was the chief of construction in the Louisville district, they had one for both Army Bluegrass Dubeaux in Lexington, Kentucky, and for Rogers Hollow at Ft. Knox. He told me, “one,” he said, “before you came along, we used to just tell the contractor, Kellogg, Brown and Root, to go to work. We’d figure out the money and the write-up later.” When those contracts came up for renewal...

DORGAN:

Pretty casual way to do business.

WATTS:

Yes it is. And that was all my fault that things were being done right. When the contract came up for renewal, I required that it be a multiple award so that the task orders had to be competed, not given sole source. I had two contractors outside of Brown – people who worked with Kellogg, Brown, and Root – come in to me and they said, “you don’t look like a witch or a bitch,” or whatever. But that is what Kellogg, Brown, and Root, they told me, was out there calling me because I was going to a contract methodology that would compete task orders and they would no longer be able to receive the sole source.

DORGAN:

Well, I want to come back to ask some additional questions. Professor Yukins, thank you for being with us. You’re an assistant professor of law at George Washington University where you teach courses on government contracts and public procurement, previously a partner at Holland & Knight, a trial attorney at the Department of Justice, an adviser to the U.S. delegation to the working group on reform of the United Nations Commission on International Trade Law Model Procurement Law. You’ve published many articles. You have a very distinguished record, and you’re very good to come and visit with us today. Professor, you may proceed.

YUKINS:

Thank you Mr. Chairman. I submitted an extensive written statement for the record but I'll offer an abbreviated version this morning.

Thank you for the opportunity to address the Committee on these pressing issues of procurement policy, in the wake of the horrific damage caused by Hurricane Katrina. On behalf of the public procurement law program at The George Washington University Law School, I appreciate the opportunity to review these important policy issues with the Committee.

Ironically, Mr. Chairman, the problems that are emerging in post-Katrina contracting in many ways echo the problems that emerged in Iraqi reconstruction contracting, and which Ms. Greenhouse and Ms. Watts have had to contend.

On September 8, 2005, the President signed the second supplemental emergency appropriation of \$52 billion for Hurricane Katrina relief. That legislation included a provision that exempts Katrina-related procurement, up to \$250,000 per contract, from all normal procurement requirements.

This new exception means that Katrina relief procurements up to \$250,000 can be made without competition, and out of the public view. This new exception therefore raises serious concerns that the same problems that dogged U.S. contracting in Iraq – failures in competition, failures in transparency, and failures in integrity – will arise again in the Hurricane Katrina relief effort.

I should note that members of Congress immediately opposed this increased micro-purchase exception. Representative Henry Waxman criticized the proposed new exception as potentially dangerous and Senators Charles Grassley, Susan Collins, and Joseph Lieberman signed a letter opposing the increased micro-purchase exception, because of very valid concerns regarding oversight and accountability.

Traditionally what we call the micro-purchases were capped at \$2,500. For certain emergency procurements, the cap could be raised to \$15,000. Until Hurricane Katrina, however, there was never any serious public discussion of raising the standard micro-purchase cap one hundred times to \$250,000.

In practice, the increased micro-purchase exception will likely mean that most normal procurement requirements, including special protections for small-business contractors, will not apply to Katrina reconstruction contracts up to \$250,000.

The radically increased exception for micro-purchases raises concerns for the small business community, which depends on federal regulations – special protections for small businesses. During House debate of the bill, Representative Donald Manzullo noted that, as chairman of the House Committee on Small Business, he was concerned that the law may, in effect, hurt small businesses' ability to "play a significant role in the recovery" after Hurricane Katrina.

To understand why, again, is important to stress that procurements under the micro-purchase cap are generally exempt from all procurement requirements. Thus, the new \$250,000 cap means that thousands of federal purchases worth potentially billions of dollars have been stripped out of the federal procurement apparatus.

There is an even darker side to this micro-purchase exemption. Government purchase cards, which have often been misused, are now open to even more serious abuse. Until now, the low micro-purchase threshold of \$2,500 has capped the amount for which authorized users can purchase and pay for supplies using these government purchase cards, outside the normal competitive process. Now, with the cap lifted to \$250,000 for hurricane-relief purchases, authorized government credit card holders will be able, in one sitting, to purchase and pay for hundreds of thousands of dollars in goods and services, without any real check on their action. The potential for abuse is staggering.

Did the federal government need these exceptions to clean up after Katrina? Probably not. The procurement reforms of the mid-1990s created a system with extraordinary flexibility, including streamlined competitions and task-order contracts that can be used to procure goods and services in minutes. The system was flexible enough to respond to the September 11 terrorist attacks, and it was in all likelihood flexible enough to respond to Hurricane Katrina.

It is important to recognize that, in the days before the September 8 legislation was signed by the President, federal agencies were already using existing authority for flexible emergency procurement to respond to Hurricane Katrina.

All of these agency's initiatives were based on existing law and existing flexibilities. Despite these agency initiatives, however, the Administration requested the additional legislative exceptions, including the \$250,000 micro-purchase exception.

Now that the new exception is in place, and there has been criticism from many quarters, the Administration has issued guidance on use of the new exceptions. While the new administration guidance from OMB noted that traditional criminal laws would continue to apply to the new, expanded micro-purchases, and the new guidance calls for careful controls on purchase cards, nothing in the new OMB guidance restored the competition and transparency, or the socioeconomic requirements, which normally drive federal procurement. In other words, the new OMB guidance did not solve the central problems with the new micro-purchase authority.

Thank you Mr. Chairman. I'd be glad to take any questions.

DORGAN:

Professor Yukins, thank you very much.

Let me ask a question about the testimony we had at a previous hearing by Henry Bunting. Henry Bunting was a procurement agent for Halliburton, he was stationed, I believe, in Iraq, or, he was stationed in Iraq. He described this \$2,500 purchase order level that has now

gone to \$250,000, increased one hundred times. He said for purchase orders under \$2,500 buyers only needed to solicit one quote from the vendor. That will be true now for purchase orders under \$250,000. He said to avoid competition, bidding requisitions were recorded individually and then later combined into purchase orders under \$2,500. About 70-75% of the requisition processes ended up being under \$2,500 with that approach. They were split to avoid having to get two quotes. Now, when you increase this 100 times is it not likely this will happen at an even greater level and with greater capacity for abuse?

YUKINS:

If there was corruption driving that splitting sir, that corruption will run rampant now. It will be much easier, you won't have to split.

DORGAN:

Well, but, corruption is I suppose in the eye of the beholder in some respects. If the opportunity to not have to get bids, to just pay whatever somebody asks you to pay, if that opportunity exists up to one quarter of a million dollars now, I mean that is not a casual number or a casual transaction, that is a big transaction. I assume that contractors and others will put enormous pressure on to get sole source contracts, split the contracts up into several smaller contracts and end up at \$225,000 and get three contracts worth almost three quarters of a million dollars all of which are obtained without bidding. All obtained on a single sole source contract. Is that likely to happen?

YUKINS:

Senator, I've spent my entire adult career as a lawyer working in the procurement system, I can guarantee you that will happen

DORGAN:

Now this issue of increasing, I'd smile, but the fact is that we've had massive problems with government authorized credit cards. I mean it's been a huge problem and were going, we're now going to use for these so called micro purchases, not of \$2,500 but of \$250,000 we are going to increase the capability to use credit cards for up to \$250,000 and that, a credit card that is a U.S. authorized credit card, likely doesn't have a limit because whatever is charge...

GREENHOUSE:

Is paid...

DORGAN:

...authorized charge by the federal government has the full faith and credit of the federal government behind it. So, we're going to have people walking around with credit cards in which they can charge \$250,000, and also in payment for contracts up to \$250,000 for which there has been no competition?

YUKINS:

It would be very difficult to audit it, Senator. If you back a month later and you look at the credit card bills, it is like going back a month later and looking at your credit card bills and trying to decide whether or not you got a good deal on a car that you bought on a credit card. That's no way to run a procurement system. You have to make those judgments ahead of time, not after the credit card bill comes in.

DORGAN:

Tell me about the...you didn't expand on the \$10 million no bid threshold.

YUKINS:

The \$10 million no bid threshold previously existed in emergency situations for commercial items where there is a market check, some check on it. Now in essence it converts all these Katrina related procurements into commercial items when they are really not. You have something that is specialized for which there is no way for the government to check the price in the market place, you'll still be able to use very very streamlined procurements.

DORGAN:

I want to show a chart here to all three of you and ask for your comments. And let me just say this; I know this has the word Bush in it. This isn't about Bush or Clinton or Calvin Coolidge. It is about what our government is doing, and whether it makes sense, whether it cheats tax payers, whether it gets the job done.

"No bid contracts win Katrina work." From the government's speech last night and I know from the hearts of legislators and the American people we're going to spend a massive amount of money in a public works program that is probably the largest in the history of America. The question is as this money begins moving out in dramatic quantity, will there be people watching, will there be people providing oversight to make sure that it is an investment in this country's future rather than waste, fraud, and abuse.

This says that “the Bush administration is importing many of the contracting practices blamed for spending abuses in Iraq, as it begins the largest and costliest rebuilding effort in the U.S. history. The first large scale contracts related to Hurricane Katrina, as in Iraq, were awarded without competitive bidding, and using so called cost plus provisions that guarantee contractors a certain profit regardless of how much they spend.”

I’ve had people testify at these hearings who were procurement officers of Halliburton and other companies and they have said that their supervisors have said “don’t worry about the cost, don’t worry about what it costs. This is a cost plus contract and we’re going to get paid for it, and we’re going to get paid more if it costs more.” And isn’t that where we are heading here? And isn’t that, Professor Yukins, what may happen with these new thresholds?

I’m just enormously worried about what’s ahead of us, not, what’s behind us bothers me a lot, and that’s what most of these hearings I’ve held have been about, but I think what is ahead of us is much more problematic, so I’d like your thoughts about that in respect to procurement purchasing, these rules, and what you’ve heard from these witnesses about what has happened in the last couple of years.

YUKINS:

The response, the Administration recognized that they may have made a misstep with this \$250,000 cap and in the first response from OMB they indicated this may be a short lived cap. To drive the public policy ball forward I would strongly recommend that the Congress put a sunset on this \$250,000 micro purchase cap because it is almost sure to lead to disaster. \$250,000 means in essence that a government official without any oversight, any competition can buy somebody a new house. That’s crazy.

DORGAN:

Let me ask Ms. Greenhouse and Ms. Watts, what has been the reaction of your fellow contracting officers in the Army Corps of Engineers to what has happened to you? I assume that contracting officers, like a lot of other professions around the country are a fairly close group. You know each other, there aren’t a lot of you, or I shouldn’t say that, but I assume it’s not tens of thousands of people, so tell me what has been the reaction to other contracting officers to what has happened to the two of you?

WATTS:

I can shed some light. Mr. Robert Driskell, who is the Chief of Contracting in the Charleston district, my former district, whom I hired him, he called me a few months ago stating he was having problems with his district commander because he disagreed with things, and that his district commander had called my former district commander Robert Rowlette to figure out how he can fire him. That is one incident. I know in the Louisville district, they intimidated,

they brought every person in contracting into the legal office asking them if they had spoken with me in the last several months. They have basically intimidated them from even communicating with us. People are scared.

DORGAN:

Well let me ask both of you, I assume that if those of you have named would show up, and we have invited them but they choose not to come to these hearings, I assume what they would say is that you are a couple of trouble-makers. You are just a couple of trouble makers. You take tiny little picayune issues in a contract and hold them up and cause the district, not, the Corps not to get its job done. Isn't that what you'd think they'd say?

GREENHOUSE:

I would say not at all. I remember when I took my contracting officers out to Dallas in 1997, they told me that the environment that they worked in was that they were in the kitchen cleaning up after all the mess was made but they were never invited to the table. They were particularly proud that they were getting leadership and courage to stand up for what it is that they were responsible for as far as contracting is concerned of which you Congress, give us the authority, you know, to do. Our lineage of authority comes from you, and it comes down a path in which the contractor, contracting officer has to be accountable. So they are proud of the fact, that when Mr. Bolton put out the letter, you know, saying independence of contracting officers must be there, and all coming about as the result of what was happening to me, and the issues that I was bringing forward, I appreciated that, you know, that letter that came out and that certainly was a boost to them that they were back in the driver's seat of doing for the government, you know, what they needed to have done.

DORGAN:

Let me just say that being a trouble-maker is a badge of honor if what you are making trouble about is on behalf of the American people stopping waste, fraud, and abuse, and demanding things be done the right way.

As I said, we are spending a couple trillion dollars, a massive amount of money, and the American people deserve to know that it is being spent the way that they expected to be spent. To invest in things that strengthen America. And when we have people that have their clutches on this money, wads of money, I've had people here who described money that was wrapped in saran wrap, hundred dollar bills wrapped in saran in bundles they threw as footballs in that office, an office where by the way in Iraq they were told to contractors that showed up to bring bags because we deal in cash, and he showed me the pictures of the massive, massive blocks of cash they'd wrapped in saran wrap.

So, my point is that there is nothing wrong with being a trouble-maker if what you are causing trouble about hurts this country.

GREENHOUSE:

But after the \$500 hammers and the \$1200 toilet seats and the efforts of Congress of providing the money under the Defense Acquisition Workforce Improvement Act to bring about professionalization of the acquisition workforce second to none, we are all proud of what happened with that, and how our contract officers have just rallied to not only get one bachelor's degree but to get whatever certifications they need in order to support their commanders to get the job done, and get it done at the least amount of cost. To sit across from their industry counterparts and know what making a good deal is and what best value is to our government. We are so proud of what you've done to enable that among our contracting people and know that they are rallying to go to school at night and do what is necessary to become the experts. Now we are asking you to insist that those experts are in the forefront of doing the business of what is necessary to get a best value, to continue to get that best value for the government, and not let it be circumvented by undue duress from people who are not in the lineage of contracting authority.

DORGAN:

Let me mention that Senator Grassley whose name was mentioned earlier, Congressman Waxman, and a good many others in the Congress care a lot about this along with me. We care a lot about these issues. About people being treated fairly, about whistle blowers being protected, about the tax payer's money being spent effectively, about people following rules and regulations, and so I just want you to know that there are a good many in Congress demanding answers.

I want to ask an additional question of all three of you. Given what you know, the history, the recent history, the challenges in front of us, what kind of confidence do you have that we will see the expenditure of these literally tens of billions and perhaps \$200 billion dollars effectively unless we begin to tighten things up. Are we in trouble as we go forward or are there people still inside the service who are contracting officers, who have the strength and capability to make certain things are done correctly?

GREENHOUSE:

Today, it must be the leadership at the Army, at the Department of Defense must pass an edict that contracting officers who are trained are going to be in charge of this money that is to be spent. Now there is the operational requirement of the engineers of all of the operational folks providing those requirements to those contracting officers but when it comes to the business part of executing those requirements, it's going to have to be inherent in those contracting officers and it has to be an independence in the execution of that to make sure that all of the judiciary and the legal impacts, and remember, none of us have any adversity to sole source. I am a great proponent of removing all of the impediments that can be, maybe raising thresholds at times, but

we also have a responsibility of putting the proper controls in place and making sure that the educated expertise of the contracting community stays at the forefront, you know, of that management, and that that management is aggressive and everybody remembers that the government is in the driver's seat of the contracts that we award.

DORGAN:

Ms. Watts.

WATTS:

I was kind of saddened to that the micro purchase threshold was raised to \$250,000. It does concern me. The cards are in the hands of many people who do not have procurement training. One of the first things I found in the Louisville district was procurement card abuse which resulted in over 400 unauthorized commitments that were split into thousands of separate transactions even at the \$2500 level. That does concern me, and it concerns me in my experience with the Corps of Engineers. In the field it is not the contracting person watching over what is going on, it is the construction person, the technical person out there and contracting has not been put into the field. It has been kept in a box and so yes it does concern me.

DORGAN:

Professor.

YUKINS:

Senator, part of my job is dealing with procurement professionals both abroad and here in the United States. Abroad, the foreigners who come to our system are stunned at how good our contracting corps is. They cannot believe how good our contracting corps is. The contracting officials I have talked with here in the United States consistently cite Ms. Greenhouse as a moral example. They cite her as a moral example. The lesson from all this, and the lesson that we can take from foreigners who observe our system is put the procurement system back in the hands of the professionals who care. Don't throw it out willy-nilly to folks who hold purchase cards.

DORGAN:

Professor Yukins do you have a stake in this debate? I mean, you come to the table as a professor, someone who has worked for major law firms, someone who has worked in the government. Your testimony today is about the procurement process, but now you tell us something about the reputation of Ms. Greenhouse. How do you, I mean tell me a bit about your experience of knowing the contracting officers and what they do.

YUKINS:

I deal with, and I was the president of the largest chapter of the National Contract Management Association, 1400 contracting officers. I spent my career as a lawyer watching contracting officers for their diligence and integrity. I dedicate my life to making...

DORGAN:

What do you make of the stories we've heard from Ms. Greenhouse and Ms. Watts about their experience in the Corps of Engineers? What should we make of those stories?

YUKINS:

I think it is the collision between two worlds that they have described. Can-do military officers versus a system of contracting officers that really take integrity as their first priority and you have to respect that. Otherwise the system will collapse.

DORGAN:

I indicated that we would adjourn by 11:00, and the President has called for a national hour of prayer. All of us, of course all of us, as Americans feel remorse and great sadness and the heartbreak of the victims of Hurricane Katrina, their families and loved ones. This country will rebuild, even as we rebuild with the spirit that really is a can-do spirit we have to be very certain that we are using public resources for the public good. There was a term "commonwealth" when this country was first established, the Commonwealth of Virginia, the Commonwealth of Massachusetts. The term commonwealth meant something. There is a common purpose, a common set of resources with which we embrace the future of this country and build for the future of this country and in doing that, especially as described by the President last night, we are going to commit a substantial amount of public resources, and I think all of us want to make certain that those public resources are really in pursuit of building a better and stronger America, not siphoned off and not skimmed off in certain areas to line pockets or to enrich contractors and so that is the purpose of these hearings.

This isn't about Republicans or Democrats, as I said it is not about President Bush or President Clinton or Calvin Coolidge. It is about, are we doing the right thing in this country and it is about contracting officers, who I think, had the courage to stand up and speak out, and have, whose careers have suffered because of it, and it's about a Congress who has passed a whistleblower protection act because we have always worried that those who have the courage to speak out when they see wrong doing are going to suffer consequences unless they are protected.

We understand whistleblower protection is not perfect. There are still people suffering consequences for speaking out, and we understand when there are threats and discharges and demotions for those who have the courage to speak out it tells others in federal service or public service don't do it. Don't do it. It is just too much trouble. Just sit back and do nothing. That's exactly the wrong message, exactly the wrong thing for this country. So we will continue to hold these hearings.

We will continue to ask those whose names are mentioned in these hearings to respond, and as I close this hearing, Ms. Greenhouse, thank you for your public service, your courage, and your willingness to provide public testimony. Ms. Watts, the same thank you for being here today and traveling all the way to Washington, D.C. to provide your testimony, and thank you for your courage. Mr. Yukins, thank you for the work you do to allow us to better understand this issue of federal contracting. Your testimony today is very helpful and we will submit it to all of our colleagues here in the United States Senate. This hearing is adjourned.