

# HOW GOOD IS OUR SYSTEM FOR CURBING CONTRACT WASTE, FRAUD, AND ABUSE?

MONDAY, MAY 24, 2010

Commission on Wartime Contracting

Washington, D.C.

The Committee met, pursuant to notice, at 9:30 a.m., in Room 50, Dirksen Senate Office Building, Hon. Christopher Shays, Co-Chairman of the Commission, presiding.

Present: Commissioners Ervin, Green, Henke, Schinasi, Tiefer, and Zakheim

SHAYS:

Good morning. I'm Christopher Shays, co-chairman of the Commission on Wartime Contracting in Iraq and Afghanistan. Thank you for attending this hearing, which addresses the important question: how good is our system for curbing contract waste, fraud, and abuse.

This opening statement is made on behalf of Co-Chairman Mike Thibault, who regrettably is under the weather and will be greatly missed, our fellow commissioners, and myself. The other commissioners at the dais today are Clark Kent Ervin, Grant Green, Robert Henke, Katherine Schinasi, Charles Tiefer and Dov Zakheim.

One task of today's hearing is to revisit the theme of the commission's first hearing, lessons from the inspectors general, which convened in the Senate caucus room on February 2, 2009. That session, held before I joined the commission, included opening comments from Senators Webb, McCaskill, and Collins and the release of the *Hard Lessons* report by the special inspector general for Iraq reconstruction [SIGIR].

We heard testimony from Stuart Bowen, who directs the SIGIR operation and from officials at the departmental inspector generals offices at Defense [DoD], State and the U.S. Agency for International Development [USAID]. Testimony at the first hearing established that billions of taxpayers' dollars had been lost to waste, fraud, and abuse.

The inspectors general told us that contributing causes included lack of planning for the post-invasion periods in Iraq and Afghanistan, the need for speed in a cash-basis environment, insufficient numbers of adequately trained contract officers and auditors, poorly written contracts

with haphazard recordkeeping, too many projects that lacked sustainability and local support and, as the DoD witness put it, continual exposure to offers of bribes, gratuities, and kickbacks.

This commission has heard a great deal about waste. Vast sums of money have been wasted on shoddy constructed buildings or on facilities too technical or too costly for local people to sustain or on programs that have too many staff for their workload and on projects that simply aren't needed.

These well-documented failings are not altogether surprising. In the urgency of contingency operations where mission requirements put a premium on speed, where oversight personnel may be scarce, where coordination among organizations and nations is a challenge, some degree of waste is a predictable byproduct for operations, even if everyone is acting with the best of intentions.

Fraud and abuse, on the other hand, involve people who are not acting with the best of intentions. There are people who are deliberately breaking their word for personal gain. They may have given their word in a military oath or while agreeing to a departmental code of conduct or in signing a contract. However they made a pledge, their deliberate betrayals of trust undermine our mission and corrode the framework of civil society.

Acts of fraud and abuse, especially if they go unpunished, erode morale, invite cynicism, encourage others to cheat, and undermine America's standing among allies and host nations. That is why Congress directed this commission to determine the extent not only of waste, but also of fraud and abuse and the extent to which perpetrators have been held accountable.

Let me emphasize that our strong criticism is not directed solely at misbehaving contractor employees. More than a third of the 477 subjects of open investigations tabulated by the International Contract Corruption Task Force in May were U.S. government employees or military personnel. Unfortunately, this is not a new problem.

For example, U.S. Army historians have written that in Southern France in 1944, quote, "An estimated 20 percent of this flag-landing at Marseilles was stolen and sold by members of the armed forces and their followers."

Abuses in Iraq and Afghanistan are also outrageous and illustrate that there is plenty of blame to go around among contractors, federal civilians and the military. Here are just a few examples.

A U.S. Army captain pleaded guilty to theft involving \$690,000 in Commander's Emergency Response Program [CERP] funds in Iraq. A former Department of Defense civilian employee was sentenced to 110 months, slightly under 10 years, in prison and fined for failing to report \$2.4 million of income in foreign bank accounts he established while working as a contracting officer in Kuwait.

A former KBR contractor employee was sentenced for supplying false receipts and taking payments from truck drivers who were stealing fuel from an airfield in Afghanistan. A Kuwait firm that supplies food for American troops in Iraq has been indicted for allegedly defrauding the U.S. government of at least \$68 million.

Hundreds of other examples could be cited. Meanwhile, nearly 5,500 members of the armed American military have now died in the Iraq and Afghanistan operations as well as at least 1,700 contractors and several dozen U.S. government civilian employees. More will die before we leave the Southwest Asia theater. It is sad and infuriating to think that while these brave men and women are sacrificing their lives, others busy themselves in squalid bouts of greed and corruption.

In addition to cutting waste, therefore, America must do a better job of preventing, detecting, and punishing fraud and abuse. Toward that end, today's hearing will pursue two main objectives: one, reviewing the challenges and issues that confront law enforcement officials as they attempt to discover and successfully prosecute fraud in a contingency environment and, two, updating ourselves, the commission, on the work of the inspectors general for Defense, State and USAID since they appeared at our February 2009 hearing.

Today's first panel follows up numerous interviews and commission meetings with criminal investigative organizations and the Department of Justice. These interviews addressed the organization's successes and challenges related to investigating and prosecuting wartime contracting fraud.

Key themes of our discussions include the coordination or lack thereof among criminal investigative organizations and the Department of Justice prosecutors, challenges in preparing successful criminal prosecutions in a war zone and policy actions that need to be taken to prevent, identify, investigate, and prosecute fraud in contingency environments. The second panel will provide an update on the departmental IG's work over the past year, their forecast of key issues ahead, and their assessment of trends in wartime contracting and project-management issues related to Iraq and Afghanistan.

The law-enforcement organizations represented here today are doing vital work on behalf of our country, our citizens' tax dollars, and our warfighters' safety and success. The commission honors their efforts, wants to understand the challenges they face, and assist in obtaining any additional authority, direction, coordination, and resources they need to bolster their attack on fraud and abuse to hold wrongdoers accountable.

We are particularly interested in seeing expanded antifraud initiatives and actions, unity of effort among federal agencies, recognition that many peacetime ways do not work in wartime, balancing between accelerated contractor and appropriate safeguards and greater accountability.

We look to our witnesses for information and counsel that will assist us in pursuing these themes in our work to reform contingency contracting for current and future operations.

Our guests for panel one are Mr. James Burch, deputy inspector general for investigations, Defense Criminal Investigative Services [DCIS], Department of Defense; Mr. Kevin L. Perkins, assistant director, Criminal Investigation Division, Federal Bureau of Investigation, Department of Justice; Mr. Raymond J. DiNunzio, assistant inspector general, Criminal Investigations Directorate, SIGAR [Special Inspector General for Afghanistan Reconstruction], and Ms. Ginger Cruz, deputy inspector general, SIGIR. She is accompanied by Jon E. Novak, SIGIR's assistant inspector general for investigations.

Witnesses for panel two are Mr. Donald A. Gambatesa, inspector general, U.S. Agency for International Development, Mr. Harold W. Geisel, deputy inspector general, Department of State and Ms. Mary. L. Ugone, deputy inspector general for auditing, Department of Defense.

I will observe that Ms. Cruz, Mr. Gambatesa, and Mr. Geisel are all veterans of our February 2009 hearing. We thank them for returning, and we welcome the other witnesses to this proceeding.

We have asked our witnesses to summarize their testimony in five to seven minutes in order to ensure adequate time for questions and answers. We also ask that witnesses submit within 15 business days responses to any questions for the record and any additional information they may offer to provide.

The full text of their written statements will be entered into the hearing record and posted on the commission's website. On behalf of the commission, all the commissioners, we thank you for being here as witnesses today for participating in what we view as a very important hearing. After the swearing in we will begin hearing Mr. Burch about the work of DCIS.

I would request that you rise to be sworn in. Thank you.

Raising your right hand, do you solemnly swear or affirm that the testimony that you will give before this commission is the truth, the whole truth and nothing but the truth?

Note for the record all our witnesses have responded in the affirmative.

And we'll start with you, Mr. Burch. And we'll go right down the line. And again, thank you all for being here.

BURCH:

Good morning. Chairman Shays and members of the commission, thank you for the opportunity to appear on behalf of the Department of Defense Office of Inspector General. As

the inspector general has previously testified before Congress and this commission, investigation and audits relating to Operation Iraqi Freedom and Operation Enduring Freedom are the DoD IG's top priority.

The Defense Criminal Investigative Service is the criminal investigative arm of DoD IG. DCIS has been engaged in investigations involving DoD contingency operations in Southwest Asia since the start of the war. Our current in-theater workforce consists of 15 DCIS special agents and one administrative assistant who have deployed in support of overseas contingency operation efforts.

As of May 1, 2010, 106 DCIS agents, close to one-third of our entire agent workforce, are involved in investigating a total of 223 overseas contingency operation cases. The volume of criminal cases has increased by roughly 18 percent over the past year.

Additionally, DCIS has committed resources to the International Contract Corruption Task Force [ICCTF] since 2006 in an effort to maximize interagency cooperation. Given the criticality and sensitivity of overseas contingency operations, we must be flexible and creative in how we approach our mission in order to address the highest-priority cases. Working in task forces and with our other law enforcement partners adds to that flexibility.

While the ICCTF has had significant successes, the DoD IG continues to identify issues specific to contracting in a war zone that have resulted in increased potential fraud, waste, and abuse. As you are aware, contingency contracting is designed to obtain goods and services as quickly as possible versus ensuring strict adherence to traditional contract administration procedures. We are concerned that contract administrators may view oversight responsibilities as an unwelcome burden conflicting with their ability to effectively perform their duties.

Complicating matters further is the fact that the payment of bribes and gratuities to government officials is common practice in some regions. Taken in combination, these factors result in an environment conducive to bribery and corruption.

Although DCIS currently keeps pace with the investigative demands in Southwest Asia, we anticipate increases in the volume of criminal allegations as a result of the drawdown in Iraq and force increases in Afghanistan. Of primary concern is the potential theft and/or diversion of viable military equipment that has accumulated in Iraq over a seven-year period.

A secondary concern involves the potential for cost overruns. Additional, more detailed concerns are highlighted in my prepared statement. In my prepared statement I also address a number of significant challenges we face in working fraud and corruption investigations in a war zone to include the complexity of the fraud or corruption schemes and the multinational, multicultural aspects of investigations.

Despite these challenges, DCIS and its law enforcement partners have assertively pursued the important mission to investigate DoD-related criminal activity. The appointment of a special deputy inspector general in Southwest Asia, DoD Inspector General Heddel, six months ago, has proven helpful in that it allows DoD IG to address coordination and logistical concerns at the highest levels in real time. DCIS believes the effectiveness of our operations in Southwest Asia will only improve as the special deputy inspector general in Southwest Asia gets his authorized staff in place.

A case example highlighting multinational aspects affecting the development of these complex criminal investigations involved a former civilian employee working as a contracting officer. The subject, a dual citizen of the U.S. and Ghana, eventually admitted he failed to report \$2.4 million in taxable income while serving in Kuwait as a contracting officer.

The individual admitted he failed to report the ownership and interest in foreign bank accounts in five different countries. These accounts were used to help conceal his unreported income and to send and receive wire transfers totaling more than \$3.5 million. Successfully tracking the financial transactions and working with the foreign governments and banking institutions posed enormous challenges.

I'm pleased to report that the case resulted in the subject being sentenced to 110 months in prison and ordered to pay \$1.6 million in fines.

Finally, I'd like to discuss steps DCIS takes when investigations do not lead to criminal prosecutions, but evidence warrants other actions. In such instances, DCIS is fully committed to holding individuals and companies responsible for unscrupulous activities that impact DoD.

Although criminal prosecution is a top priority, special agents do not lose sight of their ultimate responsibility, protecting the taxpayers and the government's interest. When criminal prosecution of a case is not pursued, DCIS attempts to ensure proper referrals or complete it for possible and appropriate administrative actions to include suspension or debarment of contractors or a levying of administrative fines and penalties.

For example, DCIS investigated allegations that an Afghanistan company stole construction equipment, failed to pay its subcontractors for work performed in excess of \$1.2 million, and fraudulently billed the Army Corps of Engineers in excess of over half-a-million dollars for spare parts never received. The investigation did not warrant prosecution, but the Army Corps of Engineers is in the process of recouping almost \$2 million from the contractors.

In closing, and as indicated at the beginning of my testimony, the top priority for the DoD IG is to provide effective and meaningful investigative oversight in Southwest Asia. From an investigative standpoint, we will continue to coordinate and integrate our efforts within the oversight community. I look forward to answering your questions.

Thank you.

SHAYS:

Thank you.

Mr. Perkins?

PERKINS:

Good morning, Chairman Shays, members of the commission. I'm pleased to be here this morning with you to discuss the FBI's efforts to address international contract corruption.

Since the inception of Operation Enduring Freedom in Afghanistan in 2002, the United States government has privatized hundreds of functions that were conducted by military personnel in previous contingency operations and, in that process, has spent over \$770 billion on private contractors.

While the vast majority of these contractors operate within the law, the FBI and its partners have also seen the emergence of complex, wide-ranging contractor fraud schemes in Iraq, Afghanistan, and Kuwait.

To combat these fraud schemes, the criminal investigative division of the FBI has taken a number of steps to leverage all available resources and ensure a seamless law enforcement response. Specifically, in 2005, we established the International Contract Corruption Initiative [ICCI] to evaluate the extent of the crime problem, engage with other law enforcement agencies, and develop the strategy to address the problem.

The initiative quickly revealed a significant crime problem that would require a coordinated approach. In 2006, after consulting with the Department of Justice and other law enforcement agencies, we joined with our partners in standing up the International Contract Corruption Task Force [ICCTF], which includes my partners here at the table. The task force is overseen by the Department of Justice and falls within the mission of the department's National Procurement Fraud Task Force.

To further interagency cooperation and coordination, we established our Joint Operations Center, or JOC, in 2007. Staffed by representatives of all nine task force agencies and co-located in FBI space, the JOC goes a long way to ensuring standardization of operations and real-time information-sharing among its members.

Agency representatives work shoulder-to-shoulder, de-conflicting investigations, sharing intelligence, and supporting operations overseas. Task force agents are currently investigating nearly 300 joint cases in the U.S. and overseas which are directly supported by the JOC.

Since June 2007, FBI agents have been deployed on 120-day temporary-duty rotations to conduct investigations in support of task force missions. The FBI currently deploys 35 to 40 agents per year to locations in Iraq, Afghanistan, and Kuwait. These agents work with other task force partners to initiate and conduct investigations.

FBI agents in theater report to the FBI legal attaché [ALAT], a permanent position within the embassy, and coordinate operations with the FBI's international operations division. In cooperation with international operations, an assistant legal attaché position was created to oversee task force mission in Iraq and recently a similar ALAT position was created to oversee efforts in Kuwait.

In June of this year, the FBI will deploy a senior-level agent to Afghanistan for a one-year assignment. The FBI anticipates that this position will eventually be converted to a third task force assistant legal attaché position.

The international corruption unit at FBI headquarters oversees task force matters, Foreign Corrupt Practices Act investigations, and antitrust investigations. Since its formation, the international corruption unit has overseen all fraud and corruption cases related to the overseas contingency operations.

Since 2004, the task force has initiated nearly 700 investigations in Afghanistan, Iraq, and Kuwait, with 273 currently open and pending. During this same time period, task force investigations have obtained over \$47 million in restitution orders and \$1 million in forfeitures and seizures.

Our joint efforts have also resulted on more than one occasion in stiff prison sentences for those who violate the trust of the U.S. government. One of our most recent, one of our most successful joint investigations recently resulted in a 17-1/2-year sentence and a substantial restitution order.

In December 2009, a former U.S. Army contracting officer was sentenced for his participation in a bribery and money-laundering scheme related to bribes paid for contracts awarded in support of the Iraq war effort.

Major John Lee Cockerham, Jr., of the U.S. Army, was a former contracting officer responsible for soliciting and reviewing bids for DoD contracts in support of [operations in the] Middle East, including Operation Iraqi Freedom.

The contracts were for the purchase of various services and products to including bottled water destined for soldiers serving in Kuwait and Iraq. The investigation determined Cockerham received favors, cash items of value from contractors in exchange for favorable treatment and consideration on the contracts that were awarded.

Once he agreed to take the money in exchange for the awarded contracts, he directed the contractors to pay his wife, sister, and others to hide the fact the contractors were paying bribes. His wife has since been sentenced to a 41-month prison term, and his sister received a 70-month term for her role in the scheme. The total restitution orders in that case alone totaled more than \$14 million.

Working closely with our partners, sharing information, and leveraging all available resources and expertise, the FBI has made significant strides in the area of international corruption. Clearly, there is more work to be done but, through a coordinated approach, we have become more nimble in our efforts and to be able to combat the most egregious offenders.

Chairman Shays and members of the commission, I appreciate the opportunity to appear before you today. And at the appropriate time, we'll be happy to answer any questions you may have. Thank you.

SHAYS:

Thank you, Mr. Perkins.

Mr. DiNunzio?

DINUNZIO:

Chairman Shays and members of the commission, thank you for inviting me to discuss the SIGAR's investigations directorate's work.

We conduct criminal investigations and civil investigations of waste, fraud, and abuse of U.S. funds appropriated for the reconstruction of Afghanistan. SIGAR has full federal law-enforcement authority through its enabling legislation.

The commission has asked if we have adequate resources, personnel, and budget to fulfill our mission. I believe we do. We have significantly increased our staffing, and our budget is adequate to support our planned growth.

An important point for the awareness of the commission, as well as others, is that SIGAR did not exist for the first six-and-a-half years of the reconstruction effort in Afghanistan. Upon its

creation in 2008, the incrementally rolled-out funding was inadequate to support SIGAR's oversight mission.

With limited available resources, the inspector general made a major decision to focus on establishing the audit capability necessary to begin its important work in Afghanistan. We are now catching up.

We have employed senior investigators with an average of 28 years of federal law enforcement experience. Their expertise spans a broad spectrum of complex white-collar crimes, including contract fraud, procurement fraud, money laundering, and public corruption. We are deploying special agents throughout the regional commands where the highest value and largest volume of reconstruction contracts are underway.

We currently have 15 personnel on board and are on track to have a total staff of 32 by the end of this fiscal year. By the end of fiscal year 2011, we will have 49 full-time employees, 70 percent of whom will be deployed forward in Afghanistan.

SIGAR is aggressively investigating criminal allegations involving reconstruction funds. We currently have 42 investigations underway. More than half of these cases concern allegations of contract and procurement fraud. Approximately 31 percent are related to corruption and the remainder involve the theft of government property.

Overseas contingency operations present unique challenges in coordinating investigations and prosecutions. Distance, danger, and difficult conditions strain traditional working relationships. Investigations involve foreign-based subjects, witnesses, and documentary evidence spread across several continents.

To meet these challenges, SIGAR works closely with the International Contract Corruption Task Force, the principal organization coordinating contract fraud and corruption cases involving U.S. government spending in Southwest Asia.

SIGAR agents collaborate with task force members to share information and investigate intelligence acquired through SIGAR's hotline and management-complaint center. We are leveraging resources and conducting joint investigations to increase the efficiency of U.S. federal law enforcement efforts in Afghanistan.

Over the past six months, these joint investigations have resulted in the conviction and sentencing of two dual Afghan-American contractors and the recovery of more than \$2 million. As the result of a recent investigation conducted jointly with the Defense Criminal Investigative Service, as well as the U.S. Army Criminal Investigation Command, two Afghan- and Korean-owned companies were required to repay the U.S. \$1.9 million. The investigation revealed the filing of false claims in the theft of U.S. government property from a construction site.

Another recent investigation led to the discovery of procurement irregularities and the recovery of \$240,000. This investigation, conducted jointly with the inspector general for the Department of State, revealed improprieties involving a kickback and embezzlement scheme facilitated through the inflated contract billing and fictitious credits.

A number of SIGAR's pending investigations have identified serious oversight, weakness in contract payments, and quality assurance. In one case, a contracting officer accepted a series of bribes to accelerate payments for a contractor that had not performed sufficiently to meet payment-acceleration requirements.

In another case, we found that a contractor received \$30 million in acceleration payments but failed to pay more than a dozen subcontractors. These ongoing investigations illustrate how the lack of oversight concerning contract-acceleration payments dramatically increases the risk of fraud and abuse.

SIGAR is utilizing new forensic tools and data-mining techniques to identify contracting fraud. We have initiated a forensic review of the Afghanistan Security Forces Fund and are examining appropriations and disbursements for the five-year period 2005 to 2009.

During this period, Congress appropriated \$18.6 billion for the fund. SIGAR is developing a risk-based assessment and rating system to flag irregular transactions and anomalies that may be indicative of potential waste, fraud, and abuse.

Afghanistan presents a number of unique challenges to U.S. law enforcement. One of the greatest is a weak Afghan law enforcement and judicial system. Almost half of our investigations include Afghan nationals suspected of corruption in connection with U.S. reconstruction activity.

We are coordinating with the FBI and the Department of Justice to facilitate the cooperation of appropriate Afghan authorities. These authorities require continued assistance to build an effective investigative and judicial capacity.

I appreciate the opportunity to appear before the commission this morning, and I look forward to facilitating your important work in assessing these complex contract-fraud issues that are before us.

Thank you.

SHAYS:

Thank you, Mr. DiNunzio.

Ms. Cruz?

CRUZ:

Chairman Shays, distinguished members of the commission, thank you once again for having SIGIR before you to discuss the issue of fraud, waste, and abuse in Iraq reconstruction.

The stability and reconstruction operations that we are currently looking at create much more vulnerability to fraud than contracting activities carried out under normal circumstances.

SROs, as we call them, are complex programs that pose unique challenges in oversight. They often involved myriad agencies, billions of dollars applied rapidly in a chaotic and violent overseas environment.

In the case of Iraq, more than \$50 billion was appropriated for reconstruction activities, and those operations were further complicated by a lack of sufficient numbers of trained contracting and oversight personnel, lack of comprehensive program plans and established program offices, weak internal controls, constantly changing requirements, and in the case of Iraq, many payments on contracts were made in cash, which exacerbated the vulnerability to fraud and theft.

As a result of this environment, U.S. taxpayer dollars are often highly susceptible to fraud, waste, and abuse.

While we have no basis for calculating the exact impact of undetected fraud on funds appropriated for reconstruction activities, we can say that SIGIR's investigative work has identified a significant number of instances where fraud occurred in the contracting process.

As of this month, our investigations have led to 42 indictments, 32 convictions, and over \$72 million in fines, restitution, and other monetary results. In addition, we have one sealed indictment, one signed plea agreement, and at least 15 more draft indictments being prepared against other suspects at this time. As a matter of fact, as we sit here today, we understand that there will be another arrest in one of our cases today that will be unsealed.

Our caseload of 113 investigations is steadily expanding, and the pool of subjects keeps growing. The types of criminal activity and the programs alluded [to] vary. To date, our investigations have uncovered bribery and kickbacks between contract officials and contractors, extortion by contracting officials, embezzlement, thefts of cash and equipment by officials and contractor employees, bribery of Iraqi officials, and fraud by U.S. and allied contractors.

Moreover, officials at the Department of Defense and Department of State, as well as nongovernmental organizations, have all been found to have been involved in criminal activity. Both senior and junior officers and enlisted personnel in the U.S. military up to the rank of full colonel have been convicted of reconstruction-related crimes. Military personnel from coalition

partner countries have also been convicted, as have the owners and employees of contracting firms and civilian employees of the U.S. government.

While many of the weaknesses that contributed to a criminally susceptible environment have been addressed over the past six years, many have not. And that is part of the reason that our organizations are here today to testify before you.

Our investigative program right now is staffed by 36 highly experienced professionals in the United States and Iraq who are closely matched to the specific investigative issues that we encounter. Our investigators have expertise in conducting analysis of complex financial and business records, in tracing funds domestically and internationally, and in investigating contracting and complex white-collar fraud, just to name a few. They understand the cultures of DoD and the State Department, and have experience working overseas and contacts with law enforcement personnel around the world.

I'd like to briefly highlight five key processes that SIGIR has utilized, which have enabled us to improve our investigative capabilities and results. And I would point to our written testimony for further details. The first relates to the evolution of SIGIR's working relationship with the Department of Justice [DOJ].

Prior to 2007, SIGIR presented its Iraq-related fraud cases to the Criminal and Antitrust Divisions of DOJ. However, these divisions had, and still have, limited resources, given the dozens of investigative agencies that they have to support.

In addition to prosecutorial support, SIGIR began to take its cases to individual U.S. attorneys' offices across the country, and we reached out to foreign law enforcement entities on prosecutions involving foreign subjects who had defrauded U.S. reconstruction programs.

Secondly, SIGIR has strategically co-located our investigators with other investigative organizations across the country where the heaviest workloads are found. We currently have nine field offices located across the country, and this approach has proven to be highly successful, as we're able to open and pursue cases much faster when our staff are in the location where the cases are being prosecuted.

Third, we've developed the SIGPRO initiative, which stands for SIGIR prosecutorial initiative. Starting six months ago, SIGIR hired three highly experienced and respected former federal prosecutors and detailed them to the Criminal Division of the Department of Justice to work exclusively on cases within our jurisdiction. This was accomplished in close collaboration with and support from senior DOJ officials.

The SIGPRO attorneys work hand-in-hand with SIGIR investigators on emerging cases to ensure that these cases are in the best posture for eventual successful prosecution. And I think the

numbers clearly show that the SIGPRO initiative has resulted in real results with the Department of Justice.

Fourth, we developed the FERRET program, which is short for Forensic Evaluation, Research, Recovery and Enforcement Team. FERRET is a sensitive investigative program that utilizes investigative and audit techniques combining sophisticated data analysis with traditional investigative technique and coordination with organizations such as the Financial Crimes Enforcement Network, or FINCEN, within the Department of Treasury. As a result, this effort has led to 45 new investigations involving 60 subjects.

And finally, we've implemented a forensic audit program in response to our mandate to forensically audit DoD, the State Department, and USAID. The objectives of the forensic audit are to identify indicators of fraud, waste, and abuse, report internal control weaknesses, and produce leads for criminal investigation. Using data-mining techniques, SIGIR is in the process of now analyzing more than \$40 billion in transactions associated with Iraq reconstruction activities.

In summary, investigative oversight in SROs represents a special set of challenges. To meet those challenges, inspector generals need special sets of tools. I trust my remarks have set forth a number of these special tools, and I will be happy to answer any questions that you may have.

SHAYS:

Thank you, Ms. Cruz.

Leading the questions will be Mr. Ervin, who is basically my co-chair today.

ERVIN:

Thank you very much, Mr. Chairman. My own welcome and thanks to each of you for being here.

I want to say on my own behalf—and I know I speak for my fellow commissioners in saying I'm enormously impressed by the work that each of your agencies has done. And I think the American people and the American taxpayers should likewise be grateful to you for it.

I have questions, specific questions, for each of you, and then some general questions, if time permits. But let me start with specific ones, and I'll just go down the line in the order in which you gave your statements.

First to you, Mr. Burch. I was struck by this part of your statement on page three when you said the following. "When engaging in contingency contracting, administrators typically do not

consider the risk of increased levels of fraud resulting from lower levels of oversight, as the mission is to provide goods and services as promptly as possible. When left unchecked, this mindset can become pervasive to the extent contract administrators begin to view oversight responsibility as unwelcome burdens conflicting with their ability to effectively perform their duties."

I think that is a very key point. And my question—really, it's really more of an opportunity for you to make a comment about it—is that I would argue that that mindset is to some degree understandable at the inception of a conflict and shortly thereafter. But your rising caseload and that of your colleagues suggests that that mindset still obtains largely.

And, you know, we're seven years after the conflict in Iraq and nearly a decade in Afghanistan. Why does that mindset still obtain, in your judgment? And what can be done about it?

BURCH:

Well, I think, you know, very simply, if you've gone into a new organization that may not be structured very well, the first answer you get to questions about why don't we do things, is that, all the way we've done those things—that's the way we do things. I think that's human nature.

So, I think part of that's the way it starts out is the way that it will continue until you can turn that tide. And there's many different things we need to do as far as turning that. And a lot of it is preventative—getting briefings to the right people, at the right place, at the right time.

Some of these fraud investigations—I know we are all concerned that they take a long time. So sometimes that deterrence doesn't take place for several years. The people don't go to jail for several years. The companies are not fined for several years.

So, you know, getting that deterrence and getting that tide turned takes a little time.

ERVIN:

What degree of support does DoD IG, DCIS get from Department of Defense leadership to go aggressively after fraud and corruption?

BURCH:

I think we get total commitment from DoD to go after any kind of corruption, taxpayers' dollars, and especially when it comes to the safety of our warfighters. Where we come across things, you know, as you may read our priority list, it's procurement fraud. But also, what will go

to the top of our priority list, where we see something happening that could put our warfighter in danger.

ERVIN:

You know, to talk specific numbers, I began by saying how impressed I am by your work. And I think you've done a tremendous amount of work with the limited resources you have.

But, you know, we have 200,000-plus troops and 200,000-plus contractors in Iraq and Afghanistan. And you noted that about a third of the DCIS workforce is involved in war-related work. But in the field, you have 15 special agents and one administrative assistant, and there's a special deputy inspector general. That number of people in the field strikes me as woefully inadequate, given the size of the task.

That's not a comment, that's not an indictment of you. It's not an indictment of DCIS. But it does go to the question, I would argue, of DoD support and congressional support, giving you the resources you need, doesn't it?

BURCH:

Well, in 2004 and '05, we didn't have anybody in theater. For what decisions, I don't know. In 2006, we started staffing theater up with two in Afghanistan, we opened the Afghanistan office. So, each year since then, we've built up to 15.

And part of that is not so much the numbers, it's stability of operation. We can throw a lot of numbers at it, but unless you're prepared to support them with the right communications, the right tools—so we would like to increase, but increase in an amount to where we actually support, and the hours in the day of our investigators are spent investigating cases, and not trying to figure out logistical.

So, I anticipate increasing that. And we are increasing that. So, I don't disagree that 15's not enough. And I would like to see more. But I want to do it at the right time and the right place, so that we are effective when we do that.

ERVIN:

Thank you, sir.

Mr. Perkins, to talk about the FBI resources, I noted your mention of all available resources in your opening statement that the FBI is devoting to this important task. You know, we've had two relatively recent—one Christmas Day, and then just a few weeks ago—terrorist incidents here in

the United States, pointing up the fact that terrorism continues to be a concern here in the homeland.

And I know, quite rightly, after 9/11, that Director Mueller made reorienting the FBI from being an investigative agency largely focused on traditional crimes, toward a preventive agency to try to prevent the next attack, priority number one.

Given that, and given the fact that the FBI continues to have a mission, of course, with regard to what I'd call garden-variety crime, likewise, you've done a tremendous amount with the resources you have. But aren't the resources devoted to wartime contracting fraud woefully inadequate, given the rising workload and the problems that we obviously see?

PERKINS:

I think, sir, what we're attempting to do in the bureau—and you're correct in how Director Mueller shifted resources, and not only shifted the resources, but shifted the mindset of the bureau to become a preventative type of agency. And you can see that in our efforts here within the task force in 2005 starting the initiative.

Today, we're trained to look for threats, what is the threat that is out there. You identify the threat. You identify a strategy of how to address it. You identify, you know, how do you succeed? What is your measure of success?

And I believe we've done that in this instance, to where in '05 we looked, identified the threat. We stood up the task force in '06.

And yes, I'll have to admit, not only in this arena, but across the board on the criminal side of the house within the FBI, we focus our resources on only the top threats, only the highest-dollar items. For instance, shortly after 9/11, we lost nearly 2,000 agents on the criminal side. We went from around 6,000 to down to about 4,000. But what we've done in that time since; obviously, something had to give.

We've only focused our resources on the largest-dollar items. Not to shift the theme here, but, for instance, in mortgage fraud, 70 percent of our mortgage fraud cases have losses over \$1 million.

Bringing it back to this contracting fraud, we've been able to stand up a task force, work jointly with the people sitting here at this table, and focus the resources we need. The resources we're running our efforts on right now come out of hide. We were fortunate enough through some supplemental appropriations, that we were able to get some basic stand-up equipment—armored vehicles, some training, and some equipment that we need. But now, as we rotate agents

overseas to work these cases, that's basically coming out of my existing budget, and we're working around the edges to make that happen.

But so far, we've been relatively successful. The FBI on the criminal side, we have 54,000 cases pending right now. And we have just under 48 percent of the agent resources in the FBI. So, we're still by far the largest component of the bureau.

Yes, can we focus more? Absolutely. Are we trying to do it in the most efficient way to meet the threat and follow our strategy? That's what we're trying to do now, yes, sir.

ERVIN:

Thank you very much.

If I may, let me just ask one quick question, I think it'll be quick, of each of the remaining witnesses, if there's time.

Mr. DiNunzio, you made the obvious point in your statement that you're reliant, the office is reliant to a considerable degree, on DoD for its cooperation and support, for operational support, for base life support, et cetera.

Has DoD been cooperative in that regard?

DINUNZIO:

Thank you, commissioner. Very much so. Department of Defense, both our civilian and our military partners, have been very cooperative with us in helping us establish the presence that's necessary for us to do our job effectively in Afghanistan.

One of the first things that we recognized, or that I recognized coming into this was that I had to have a large, broad presence in Afghanistan, that I had agents on the ground that were present where the reconstruction activity was occurring. That's important for intelligence-development purposes, as well as putting cases together that will be successful in the judicial district back here or in Afghanistan.

So, we're getting a vast amount of cooperation from the Department of State as well as our military partners.

ERVIN:

Now a quick question about subcontractor visibility. You talked a little bit about this in your statement.

Why don't we, the United States government, simply require subcontractors to subject—and foreign subcontractors—to subject themselves to United States jurisdiction, legal jurisdiction, as a condition of the contract, and then enable us to use the penalties of suspension and debarment if that's a problem going forward?

DINUNZIO:

Well, sir, that's an excellent question. I think it's more of a political question than an investigative question. But it would dramatically resolve some of the issues that confront U.S. law enforcement in attempting to make successful cases against Afghan nationals.

One of the things that our counterparts are doing in the Department of Defense in helping stand up the Afghan national army, as well as the Afghan national police, is establishing a biometric-collection data system where they gather information from all of the participants and members of those forces, either fingerprint, full-face and profile photographs, as well as retina scans.

The Department of Defense does that, as well, or is beginning to do that in Department of Defense contracts involving Afghan-national-owned companies. We do not do that in the civilian reconstruction effort, and it's something that's under study now.

ERVIN:

Maybe one more? Yes, just one quick question for you, Ms. Cruz, and then I'll yield to my colleagues.

I know that SIGIR has advocated for the concept of a special inspector general for contingencies in general. There appears to be—and you can state the contrary if you believe that to be the case—there appears to be limited political support for that at the White House, the Congress, among your colleagues.

That being so, I would argue that the work of SIGIR itself and SIGAR suggest that there is tremendous value in having special inspectors general for specific contingencies once those contingencies arrive.

Is that the answer to the larger question of having an office that's available to respond to these kinds of events, knowing that the United States is likely to engage, whether we like it or not, in contingencies for the foreseeable future?

CRUZ:

I think what has been proven by the existence of SIGIR and by the creation of SIGAR is the merit of having something that is singularly focused on an event in which multibillions of dollars are being spent in a very difficult environment.

I think, in my testimony, I talked about stabilization and reconstruction environments being a completely different arena for not only investigation of law-enforcement elements, but also in the fraud cases and in the audit cases. And I believe the supplement that a special inspector general can provide to the existing inspectors general of the Department of State, the Department of Defense, and USAID are useful, if they're properly coordinated.

And I think that they can give the Congress and the American taxpayers an added degree of comfort that there is the appropriate amount of oversight and accountability being applied in these very difficult, very unique circumstances.

So I think that the tools that the Congress has given to both SIGAR and our office are tools that have enabled us to perform unique missions in very difficult circumstances. And I think the successes of both of our offices would suggest that such an office of this type should be considered by policymakers as they look at the future and the possibility that large amounts of money could be applied in other overseas contingencies.

ERVIN:

Thank you very much.

SHAYS:

I thank the gentleman, my co-chair.

And Dr. Zakheim?

ZAKHEIM:

Thank you, Mr. Chairman.

First of all, I want to echo what Commissioner Ervin said. I think you all are doing a phenomenal job, and it's not really just about taxpayer money. It's what Mr. Burch said. It's about the lives of our young men and women out there, and that's what's really important, what's more important even than taxpayer dollars.

One thing that struck me is that the total value on one of the charts Mr. Perkins provided of all the restitution, and everything you've gotten back is about \$230 million. Am I correct on that, sir?

PERKINS:

Yes, sir. I believe that's accurate.

ZAKHEIM:

OK. But you also said, Mr. Perkins, and I quote here, "The crime problem was immense." That is to say, this is a huge problem out there. Am I correct in understanding that?

PERKINS:

Yes, sir.

ZAKHEIM:

OK. And we have contracted over the last seven or eight years for well over \$100 billion. Is that correct?

PERKINS:

Yes, sir.

ZAKHEIM:

All right. Well, to me, doing the sums, that's one-quarter of one percent, and that sounds to me like we probably are not catching most of what's going on. To catch it, you're going to need resources, and you said things are being taken out of hide.

Could you explain to me why it is that you're not getting more resources? Is it that you're not asking for more? Is it that OMB isn't letting you ask for more? Is it that Congress isn't giving you

more? I mean, clearly, to find \$230 million when we're contracting for over \$100 billion is a little bit of a disconnect.

PERKINS:

Yes, sir. And I can understand. I can relate this a little bit to what we're facing in the criminal division on the health-care fraud side, where you have billions and billions of dollars out there, and estimates of anywhere from 5 percent to 10 percent being fraud. We're not even beginning to touch the total dollar amounts.

But what we're looking at, when I mentioned taking out of hide, a couple of things. For instance, this year, in our appropriation, in 2010 appropriation, Congress saw fit to provide us a good number of intelligence analysts. What we were able to do, I believe we put five new intelligence analysts into our efforts within this particular area, which then eliminated contractors that we had in place. It saved us a good bit of money there.

And yes sir. Go ahead.

ZAKHEIM:

I was just going to ask, how many did you ask for? Was it five or did you ask for more and you only got five?

PERKINS:

No, this was across the board. This was I believe we actually got—off the top of my head, I can't remember the exact number for our criminal efforts total. This was a small portion of what we got, and I was able to divvy out amongst the many competing challenges that we manage in the criminal division, but this was something that we put people in place within the task force that will make an immediate impact.

It's one of the ways we're trying to place our resources now. We do it in the drug arena. We do it in the gang arena, where instead of "onesy, twosies," we're able to put five people into a spot. They're going to make a difference. They're going to make an immediate difference.

ZAKHEIM:

Would it be helpful to you to identify as a separate line item your requirements for Iraq and Afghanistan, given that these are wars?

PERKINS:

It could potentially; it would be helpful for us. And I know in our budget preparations, those things are considered. I know that, in the end, Congress has been actually fairly good to us in rebuilding the criminal program.

I've been able to put agents in there. And if you look at our resources over the period from 9/11/2001 to the current period of time, it's been a slow trend back up in rebuilding—each year, is a little bit more, a little bit more.

We've gotten significant resources on the financial-crime side of the house, which I consider this, and I've actually utilized some of those resources in this effort, because of the fraud, the government fraud and contracting efforts.

So while we could always do more with more, I believe we're utilizing the resources that we've been provided by the administration and by Congress to the best of their capabilities.

ZAKHEIM:

But you still could use more?

PERKINS:

We can always do more with more, yes, sir.

ZAKHEIM:

And, again, \$239 million out of \$100 billion sounds to me like you could do with a lot more.

Ms. Cruz, you said in your written and your oral testimony that it seemed that the criminal and antitrust divisions didn't have enough by way of resources, and you had to go to the assistant attorney generals. Is it your perception that perhaps this is not the highest priority for DOJ?

CRUZ:

I wouldn't speak to the priorities of DOJ. I would let them speak to their priorities.

ZAKHEIM:

I asked your perception.

CRUZ:

My perception is, they have a lot of priorities. And the dollar amounts on our cases are not necessarily the highest, as indicated by the FBI. And sometimes the difficulty in the amount of time and the complexity of these cases means that if you're coming from a larger agency with multiple priorities, the amount of resources that this is going to draw is not necessarily related to the outcome.

So I'm not surprised that the larger agencies don't focus on this the way that the smaller agencies do, which is why I think it's very important that you have smaller agencies that come up with creative ways of doing it. It's not always throwing more resources at it. We've tried to be very creative in how we approach it, and we've tried to be creative in making these cases easier to understand for the Department of Justice. And I think, in partnership, it's worked out well, and I think that they've provided us good support.

ZAKHEIM:

Now you've totally confused me, I'm afraid. Last time I checked, and maybe since I left DoD things have changed, but I thought DoD was the largest single agency in the government.

And Mr. Burch rightly said this was the highest priority for DoD. So what do you mean by larger agencies? I mean, if DoD has got the highest priority for this, I don't understand what you're saying.

CRUZ:

I think, in the case of the Department of Justice, in the early years their focus was on counterterrorism, and that, I think, is very understandable. The issue of fraud, white-collar crime, somebody who might have taken \$1 million in a reconstruction program, was necessarily secondary to the issue of trying to find out who is funding the Al Qaeda network.

And so we understood that. And if they had a limited number of people they could put there, we felt that the burden was on us to pursue these white-collar crime cases, because at the end of the day, when you're weighing the difficulty and the impact on national security, it's understandable that they put their resources towards the counterterrorism cases.

But I will say that, as we have developed new tools and as we've developed new ways to look at these cases, and as we've made a strong argument for the nexus between the money that's

being stolen in these fraud cases and the potential for that money funding these terrorist networks, I think that the Department of Justice has really come around, and they have put resources in the last couple of years, and we've seen a change that has resulted in more ability for us to move our cases along.

ZAKHEIM:

Well, the reports out of Afghanistan certainly substantiate what you assert. The money gets taken from us and winds up funding the Taliban and others of that ilk.

Mr. Perkins, how many people does DOJ have full time in Afghanistan?

PERKINS:

Overall, I know for this particular effort, we have 12—oh, in Afghanistan, we have five agents specifically working task-force issues. There are a greater number of agents in that theater over there, but I believe their mission and numbers are classified.

ZAKHEIM:

OK.

Mr. Burch, what's your sense? DCIS finds these people and gets them arrested. What's your sense about how quickly DOJ brings them literally to sentences of one kind or another?

BURCH:

My sense is, we all operate in a sense of urgency. I believe DOJ is operating in that same sense. Different cases take different lengths of time.

We ran a stat, as a matter of fact, on our closed cases in Southwest Asia. And the stat said that our cases were taking 1.3 years. But stats can mislead you. I mean, we've got cases that are now open six years that we're just starting to get indictments on.

So, you know, they're accepting 73 percent of our cases concerning Southwest Asia, so I think we and they are working together very well.

ZAKHEIM:

OK. And one final question. My understanding is—and this is from a letter from Congress to the attorney general—that when an agreement is reached with a contractor that has violated provisions and committed some kind of fraud, very often DOJ then says that they will intervene to support them when they're up for consideration for suspension and disbarment. Is that correct?

BURCH:

I don't know that.

ZAKHEIM:

Mr. Perkins, is that correct?

PERKINS:

I'm not aware of that, sir.

ZAKHEIM:

Ms. Cruz, are you aware of anything?

CRUZ:

No, sir.

ZAKHEIM:

Well, so that letter from the Hill was totally misinformed? Is that what I'm to understand? Would you be prepared to assert that?

PERKINS:

Sir, I've not seen the letter, and I would -- I would have to follow up on that for you and be happy to.

ZAKHEIM:

OK. It's a letter dated May 18th to Mr. Holder from Adolphus Towns, the chairman of the Oversight and Government Reform Committee. And it seems to me that if DOJ helps people avoid suspension and disbarment, that sends the absolute wrong signal to every single contractor out there. Wouldn't you say that, Mr. Burch, if that were, in fact, the truth, if Mr. Towns has it right?

I mean, what would be the impact if contractors know that, you know, you cut a deal with DOJ, and then they're off the hook on the disbarment or suspension issue?

BURCH:

I mean, on the surface, I can't disagree with what you said, so . . .

ZAKHEIM:

OK, thank you.

SHAYS:

I thank the gentleman.

Mr. Green?

GREEN:

Thank you, Mr. Chairman. Let me echo the opening comments by the two commissioners who preceded me and welcome you and also thank you for a difficult job that all of your agencies are performing under often very limited resources.

Mr. Burch, how effective do you believe suspension and debarments are in preventing or minimizing fraud?

BURCH:

Overall, I think they're effective, but we have to also understand that those suspensions and debarment is not punishment. It's strictly a business decision on how the government will contract its money.

GREEN:

But if a company is debarred, that has significant impact on them, true?

BURCH:

True.

GREEN:

Mr. Perkins, referring to the letter from Chairman Towns to the attorney general, which I acknowledge, it doesn't appear that the witnesses have seen, let me quote a short part of that to you and then ask for your opinion.

"The committee expresses considerable concern that settlements of civil and criminal cases by the Justice Department are being used to shield or foreclose other appropriate remedies such as suspension and debarment." Would you comment on that, please?

PERKINS:

Commissioner, without knowing the specific cases you're talking about in that case from a specifics point that would be difficult. But overall, I think what the department attempts to do in their efforts is to address each case individually in the most appropriate manner, whether it be through criminal prosecution, civil remedies, debarment, or the like.

And I think each case may be focused on, you know, for its individual merits. And again, I would have to say I would have to know the specifics of what the letter's referring to before I could really comment on that.

GREEN:

Do you feel that suspension and debarment is an important deterrent in avoiding or preventing waste, fraud, abuse?

PERKINS:

Well, absolutely, sir. Something like that to a contractor, to a vendor, has to be a business decision or has to be something that they would consider in carrying out any type of an overt activity. If they're going to lose the contract and be cut off from the federal government,

especially depending on the level of business that they do, that could have a significant impact on that company, absolutely.

GREEN:

Commissioner Ervin raised the issue of subcontractors and often the difficulty in having visibility into what subcontractors are doing, not only what they're doing, but certainly as you conduct investigative procedures. Would—and this is for each of you—would you favor modification to policies, regulations, or legislation, if necessary, that gives the government complete visibility into activities of subcontractors?

Mr. Burch?

BURCH:

Certainly would favor that. But one of the things I'd like to point out, being in federal law enforcement for 30 years—and it goes back to what Mr. DiNunzio was talking about—one of the key components we have domestically in federal law enforcement is the state and local law enforcement, how they train, how they professionally assist us. And that's something that we're working with the Iraqi government and the Afghan government to help in training their law enforcement because the host countries are going to be the ones that can help us mostly pursue subcontractors if they are of that country.

GREEN:

But we don't have visibility today into subcontractors for U.S. companies, among others.

BURCH:

Right. But I think changing the provisions as you had talked about would be something that would help us in our investigations.

GREEN:

Mr. Perkins?

PERKINS:

Yes, Mr. Green, I would have to agree with that, especially in areas of individual contracts. Provisions that could be placed into contracts that could allow for better oversight of what was taking place would be of great benefit.

GREEN:

Thank you.

Mr. DiNunzio?

DINUNZIO:

Commissioner, I think it's essential. I'm surprised that we don't have that capacity. Oversight is the biggest issue that we have in contract fraud and abuse—lack of oversight. So if there were provisions that would enable prime contractors to monitor that activity and the government have access to those records, I think it would go a long way toward resolving some of the issues that we're discussing here this morning.

GREEN:

Ms. Cruz?

CRUZ:

We would strongly support that, sir. I think all of our written proposals through *Hard Lessons* have indicated that the subcontractor level is usually where you have the greatest degree of problems with fraud, waste, and abuse.

GREEN:

Thank you.

All of you, or a number of you, have talked about a significant number of convictions, if you will, or penalties imposed on government personnel and/or contractors. I just returned Saturday from a week in Iraq. And, you know, we hear a lot about Major Cockerham, a few others. But I saw no steps that had been taken to advertise, if you will, media PR to maximize the deterrent effect that some of these penalties probably should take.

Now, I didn't spend a whole lot of time watching Armed Forces Network or the Pentagon Channel. And there are a number of public service announcements aimed at U.S. forces through that media.

But even Cockerham, as much as people like to roll that out as the example, seemed to be kind of two-day stories. And you get a piece in *Army Times*, which doesn't have, incidentally, terribly wide distribution in theater. What are we doing or what should we do to maximize the deterrent effect that these penalties, whether they be imposed on corporations or individuals—what could we do, should we do to expand that?

Start at the left there, Mr. Burch?

BURCH:

I agree it should be expanded. And what we do specifically at DCIS, what you're talking about, is education and awareness. You know, it's not only what can happen to you. It's the deterrent, it's using these things as examples. So as far as DCIS, not so much in a publicity arena, but in our education awareness, our briefings, trying to find the focal point we can get to make people aware that are in the business, that are in the contracting business.

GREEN:

What we've got to do, though, I think, is make every contractor and every individual in theater aware that if you're going to do this stuff, you may go to jail. That's what I'm saying. And I don't see it.

Now, I may be wrong. Maybe I should have watched more TV.

But what—again Ms. Cruz, what . . .

CRUZ:

If I could have our assistant inspector general for investigations, Jon Novak, answer. I think we have one answer.

GREEN:

Sure.

Mr. Novak?

NOVAK:

We've taken a couple of steps. We've posted a typical hotline, SIGIR hotline posters at all the contracting offices, both in English and Iraqi and have had calls based on those. We've also had presentation sessions with the contractors talking about types of frauds and hoping it would have a deterrent effect and a thwarting effect.

GREEN:

OK.

Mr. DiNunzio?

DINUNZIO:

Yes, Commissioner, I understand what you're saying. And I believe we need to be much more aggressive in the way that we put public information out with regard to our successes. I think one of the frustrations may be that a lot of times emphasis is placed on the civil recovery side. And we're not at fruition point yet on some of our larger criminal investigations.

We can't control what the media reports. We have had some small successes with SIGAR through the task force. And we have put that information out publicly. However, I think as some of our larger contract-fraud investigations come to fruition and we see some significant indictments that you'll see a much more aggressive front from the task force on that.

GREEN:

Well, I hope so because again, Armed Forces Network is just one media event. But, you know, a lot of folks watch it. And to me that can be much more effective than, you know, a one-time or two-time briefing to a contractor. And it could also impact troops or other government officials.

OK, my time is expired. Thank you.

SHAYS:

Thank you, Mr. Green.

Mr. Tiefer, Professor Tiefer?

TIEFER:

Thank you, Mr. Chairman.

I'm looking for legislation that would change, that would help with contingencies. And for one particular one I'm going to seek a brief yes from each of you. And if you want to make a different, a longer reply, please give it to me for the record.

The Recovery Act provides enhanced investigative authority. Section 1515 says IGs should have access to records of contractors and subcontractors. And it gives IGs access to employees of contractors.

Ms. Cruz, does SIGIR support this?

CRUZ:

Yes, sir.

TIEFER:

OK.

Mr. DiNunzio?

DINUNZIO:

Yes, sir.

TIEFER:

Mr. Burch?

BURCH:

Yes, sir.

TIEFER:

And Mr. Perkins?

PERKINS:

Yes, sir, most.

TIEFER:

Great.

Continuing for authority we might find—Ms. Cruz, I saw an interest in financial disclosure in your submissions. Currently we found out in a previous hearing regulations are being developed for procurement-support contractors, which are like CACI or SERCO, to have various requirements. And we zeroed in particularly on financial disclosure statements.

CACI's CO was here, and he says they already do that. Would that be something that could usefully be extended, make prosecutions in appropriate cases easier for other contractor officials? And I note as an example that KBR had purchasing managers convicted for kickback-related crimes—but very hard to do so with technicalities in the way.

CRUZ:

Sir, any additions to transparency on any level would certainly help our ability to prosecute crimes. And I think it would also help to deter people from those types of activities.

In addition, I think corporate responsibility also needs to be emphasized because, you know, there is this issue of the government imposing these types of regulations on corporations and something that we looked at from the very beginning was the desire of corporations to impose those types of transparency upon themselves and to make sure that they were open when they work with the government and they realize that those types of higher ethical standards will be required of individuals that they send to work into a war zone.

TIEFER:

OK, Ms. Cruz, let me ask another quickie. Section 1553 of the Recovery Act protects contractor whistleblowers who can have IGs, such as you are, investigate their complaints. Does that seem like something that would be a good idea, since the Recovery Act doesn't apply in contingencies, to be applied to contingencies?

CRUZ:

Extensions of the Whistleblower Act would be very positive, I believe.

TIEFER:

Now, still with you, Ms. Cruz. I know you're proud of the joint audit that you did with the State Department of Blackwater. And as I checked a recent index that State has only released for our hearing, I think, it shows that out of six recommendations that the State Department made or you both made—excuse me, out of seven—six, six are still called open, meaning Blackwater was not in compliance in six out of seven recommendations, which is something of a record.

That is I looked through the whole index. I've looked through the index DoD provided. And six is like one of the top numbers of FBI. And the type of issues that were called non-responsive included, and I think were covered in that audit, included Blackwater over-billings, Blackwater's labor-cost data. And there were several on government property costs.

Does that sound like what you found in your audit? And could that be used—if people at contracting offices were willing—as past performance on Blackwater, negative past performance?

CRUZ:

To the issue of the response to the recommendations, our audit team is currently in the midst of a job which is looking at the responses of the State Department to that. So I don't really want to say what the results of that review are going to be. But we are going to be publishing that in the next quarter, a review to see the extent to which our recommendations have been implemented.

But on the other issue, I think that it's important that the types of oversight that we provide recommendations that we hope would improve the outcomes of these programs. And if they are implemented, I think that there would be outcomes that would be evident.

TIEFER:

Alas. I welcome your investigation. I look forward with great eagerness to reading it. And I really don't think I'm going to be disappointed by it, except disappointed in Blackwater's performance.

This might be a question for both you and another witness. But let me see if I have time.

The AID IG published a report on suspension and debarment. You've heard a lot of interest from that in the panel as a remedy you can get to. And what the AID IG said as its two basic

recommendations on the subject, one was don't just debar for the statutory minimum of convictions.

I'm going to start with you, Mr. Burch. Don't just debar for convictions, but go up to the next level to debar for willful or unsatisfactory performance.

It sounded like you take these very seriously. Even if there are no crimes found, might the DCIS refer for suspension or debarment consideration for a willful or unsatisfactory performance?

BURCH:

Yes, we would refer those, absolutely.

TIEFER:

And if primes, prime contractors, failed to certify about the responsibility of subcontractors, doesn't that create problems for you? And, therefore, don't you think the prime should be pressed toward 100 percent of such certifications?

BURCH:

I'm sure we'd have no objection to that. But we . . .

TIEFER:

That's good enough.

BURCH:

. . . we would only . . .

TIEFER:

I don't mean to shut you off. I mean, no objection is the best to hope for.

Do you have a position on that, Ms. Cruz?

CRUZ:

I believe suspension and debarments are a very useful tool. We have applied them throughout the Iraq reconstruction program. And I think that keeping the standards high and holding contractors accountable is an important thing to do.

And I think that suspensions and debarments, in the case of very slow prosecutions, are one of those tools that you can immediately apply to prevent someone from getting a follow-on contract.

TIEFER:

All right. I'm with you.

Mr. Burch, to come back to you, I think in your written testimony you gave us in advance, you noted the foreign problems, problems with foreign targets. And I think, in particular, you cited Public Warehousing Company of Kuwait. And as a lesson learned from there, you believe, I think, you're worried about the Iraq drawdown and the potential for losses and that has, quote, the "potential for cost overruns" and other questionable actions on the part of contractors involved in the drawdown.

And you see a problem that criminal activity often crosses multiple venues. Would you support legislation that would give you greater, simpler ways to deal with these foreign contractors?

BURCH:

Yes, I would. I would support that. But we also need the host-country enforcement, as well. And that's one of the things that we work with the various host-country law enforcement, to stand them up and get them educated.

TIEFER:

But you might want jurisdiction over an Iraqi contractor, also?

BURCH:

I'm not a legislator. So if that could happen, it seems like it would be a good tool.

TIEFER:

OK. My time has expired.

SHAYS:

Thank you.

Mr. Henke?

HENKE:

Thank you, Mr. Chairman.

I'd like to pick up on Mr. Green's question about subcontractors and visibility into subcontracted dollars. I'd like to ask each of the investigators here, except for FBI, would you respond to this notion—or a notion of having foreign subcontractors as a condition of being a subcontractor as a condition of receiving U.S. taxpayer dollars—having a foreign subcontractor be contractually required to submit to U.S. jurisdiction? What kind of an effect would that have on your ability to investigate and then prosecute fraud?

Mr. Burch?

BURCH:

If that could be instituted, I think it would be a positive effect. It would give us jurisdictional authority to go after these foreign subcontractors, if that could be done. I'm not in the contracting business other than investigating it, but it certainly would be where we could pursue them.

HENKE:

Favorable, just a good reaction then, in short?

BURCH:

Yes.

HENKE:

Mr. DiNunzio?

DINUNZIO:

Of course it would aid our mission. It could be problematic politically for the U.S. I know that one of the emphases of the reconstruction effort is Afghan first, and we're trying to get money into the hands of the Afghan-owned companies to stimulate their economy. We're also trying to stand up the rule of law and train the Afghan national police and establish a court system that is effective there.

And by the U.S. going in and prosecuting Afghan-owned companies in the U.S. or possibly in U.S. courts in Afghanistan, it may stall that effort. But in theory, it would, of course, provide us a great deal of assistance in accomplishing our mission.

HENKE:

OK.

Ms. Cruz?

CRUZ:

I think that's a very key question. In all of the Iraq reconstruction fraud cases that we have, we have not had a case in which we've been allowed to go after an Iraqi subcontractor under the current construct of laws.

And I think there needs to be a test case or two to really determine what needs to be in place, because this is an area of great opacity, and it's a certain worry for us because we do know that there's a degree of crime out there.

The way we've approached it is try and get the Iraqi officials to go after the Iraqi counterparts, and then we go after the U.S. side. But I think the ability for us to reach in, if it's U.S.-appropriated money, and go after an Iraqi contractor would potentially be very useful.

But I think there are also some pitfalls. And the entire issue needs a lot more study. And I think that would be something that the Department of Justice and Congress should look at, especially with \$100 billion being spent in overseas contingencies, much of it with foreign companies.

HENKE:

My second line of questioning is on the issue of referrals to DOJ. I'd like to get at the—I call it your batting average. If you had, each of you, if you had 100 referrals to DOJ, in general, how many of them does DOJ pick up and prosecute?

Mr. Burch, just brief answer, please?

BURCH:

Seventy-three percent.

HENKE:

Seventy-three percent over time, for all . . .

BURCH:

That's all of our Southwest Asia cases we've presented. . .

HENKE:

All contingency work?

BURCH:

. . . right.

HENKE:

OK.

Mr. DiNunzio?

DINUNZIO:

I would say it's much larger than that. Of course, we're a much younger organization, and we haven't brought a number of cases to the point of giving us historical data, to give you an accurate number, but . . .

HENKE:

But you've made referrals?

DINUNZIO:

We have made referrals. One point to note is that all of our investigators are 28-years-plus federal law enforcement experienced investigators, and we only bring matters to the Department of Justice that we know merit Department of Justice attention.

HENKE:

So batting average?

DINUNZIO:

I would say 90 percent.

HENKE:

OK. Ms. Cruz?

CRUZ:

I would say 100 percent, but let me qualify that, because we have, as you know, inserted our own prosecutors into the Department of Justice. And so we sort of jointly understand which cases are prosecutable and which are not, and so we together decide if a case has legs to it, it will be prosecuted.

HENKE:

OK. So why did you decide to have a SIGPRO initiative?

CRUZ:

Because . . .

HENKE:

I read it very clearly in your statement. You hired three former federal prosecutors. You pay them. You detail them to DOJ. They do your work at DOJ. . .

CRUZ:

Yes. Yes.

HENKE:

. . . at DOJ for prosecution.

CRUZ:

Yes, they do.

HENKE:

Why did you do that?

CRUZ:

We did that to supplement the capacity that the Department of Justice has provided us because they needed the additional capacity.

HENKE:

Were you not satisfied with it at the point you supplemented it?

CRUZ:

We felt that more resources could be put towards it. And let me qualify. It's not just our three that are doing our cases. There are also a significant number of Department of Justice lawyers who also work on SIGIR cases. So our three attorneys are an added benefit to the Department of Justice.

HENKE:

So you felt more could be done, you had the resources.

CRUZ:

Yes.

HENKE:

They may not have had the resources.

CRUZ:

Yes, sir.

HENKE:

You paid for the staff to do it, and you're seeing the result.

CRUZ:

Yes, sir.

HENKE:

In general, does DOJ's willingness or ability, just based on resources and priorities—and I understand that—does DOJ's willingness or ability to prosecute impact the likelihood that you'll refer cases in the first place? In other words, does have it a deterrent effect on you, Mr. Burch?

BURCH:

No, it does not.

HENKE:

Mr. DiNunzio?

DINUNZIO:

No, sir, it does not.

HENKE:

Ms. Cruz?

CRUZ:

No, sir.

HENKE:

Ms. Cruz, you educated me on, I think, a very important point in your statement, or one of the questions you had, and that is this issue of—they, contingency-contracting fraud cases—are generally low-dollar. A \$10 million fraud case is probably a really big deal in your world, right?

CRUZ:

Yes.

HENKE:

It's a big number. It doesn't compare well with billions on Wall Street.

CRUZ:

No, sir.

HENKE:

So they're low-dollar, low-bang, and probably they're really hard to get at, because you've got to get into country and you've got to get logistically around to get supported. So low-dollar, hard to do, not likely to get picked up, but I would suggest that the difference is between a million-dollar Wall Street fraud case and a \$10 million fraud case in Iraq or Afghanistan is that, in the Wall Street case, national security is not at risk and troops' and civilians' lives are not at risk.

So in that calculation of what to pick up, Mr. Perkins—and I understand you're speaking for DOJ here. Is that fair?

HENKE:

In that calculation of what cases to pick up, and if you're comparing simply a billion-dollar Wall Street case and a \$10 million big case from Ms. Cruz or Mr. DiNunzio or Mr. Burch, how do you weigh the fact that troops' and civilians' lives are at risk and that we're at war? Where does that come into the math?

PERKINS:

That's weighed very heavily. And across the board, in many of the things we do, it's not attributable solely to dollar-loss figures. Public corruption, corruption of public officials, is our number-one criminal priority within the FBI. Very few of those cases have large dollar-loss figures that they would take.

So there is a whole universe of issues that are brought into consideration. And where national security, where the lives of our troops and our civilian contractors who may be over there could be at risk, that has a very, very high priority within the prosecutive decision.

We look at each case individually. We look at it on its merits. We look at the types of witnesses we have, the type of evidence that's collected. And that's not just limited to these cases. That's in any case that's brought. And the prosecutors working closely with the investigators will join together to make that decision in the end, is what is the prosecutive merit?

And when you talk about prosecutive merit, yes, dollar loss is a large figure or is a consideration, but so are an entire universe of other issues. And so I wouldn't weigh one over the other in these types of cases. And where you do have national security in the lives of our soldiers at risk, it's probably the number-one priority.

HENKE:

OK. Thank you very much. Thank you all.

PERKINS:

Yes, sir.

SHAYS:

I thank the gentleman.

Commissioner Schinasi?

SCHINASI:

Thank you, Mr. Chairman.

I'm going to ask questions about a couple of other things, although I certainly want to support my colleagues in their drive to see if greater transparency and visibility over the contracting process would help you all in trying to catch the wrongdoing that goes on.

I want to ask you about cash economies. You talk in your statements about how complex and challenging the environments are within which the U.S. is working, but also within which you are working. And a couple of you have raised this idea of lots of cash going quickly into theater as a huge problem.

One of the ways that that has happened, of course, is in the Department of Defense's Commander's Emergency Response Program [CERP]. DoD has gone back a couple of times to the Congress to ask for an expansion of the program, because they believe it's very effective to have the commander have quite a bit of walking-around money to help him in his or her in their daily activities.

But I would just ask your perspective of any of you that care to answer. Would you support from your investigative perspective expansions of these cash kind of programs?

Mr. Burch, I'll start with you.

BURCH:

Well, purely from an investigative standpoint, cash is a problem. But from the warfighter's standpoint in getting the mission accomplished, I believe I can understand how that is an effective tool to do that.

You know, I think it's one of those problems that, when you use cash, there's no record. There's no electronic record. There's no documented record. And there's ways to steal the money. I mean, the only good news about some of these fraud cases is, you usually don't do it alone. So sooner or later, somebody will end up talking about it, hopefully.

SCHINASI:

A lot of the rest of the world is going to the use of cell phones and other handheld devices to create banking systems and moving much more into an electronic funds transfer kind of environment, which might be an alternative way to get money out quickly without actually having the cash and would create a record. Would that be a helpful way to think about how we operate at the local level?

BURCH:

Yes, I think that's true. And I think DoD is looking at that. But I think you also have to appreciate the environment, especially in Afghanistan, where some of these things are just not going to be accessible for the time being. But I agree. And I think that's being aggressively looked at.

SCHINASI:

Yes.

Mr. Perkins, any opinion on that?

PERKINS:

No, I would agree with what Mr. Burch said. And in follow-along, I think it was brought up earlier in the testimony today with regard [to]—I call it the rock-in-the-pond theory. Early on, when you have a big splash, things are taking place. Warfighters and commanders in theater need this flexibility to do things.

But as the rings from the splash go out, the water becomes calmer. Normalcy begins to come into place. And it's at that point that cash issues become extremely concerning for us, because again, as an auditor for almost 30 years and 25 with the Bureau, you have to have an audit trail. And of anything, that's the least possible.

So anything that you can have that would control that is good. But I don't want to restrict the warfighters' ability to operate in-theater at this point yet.

SCHINASI:

Mr. DiNunzio?

DINUNZIO:

Well, cash is always problematic because of lack of accountability. My understanding of the Commander's Emergency Response Fund was that it was initially designed for much smaller procurements and acquisitions. As a matter of need it evolved into a much larger program.

In fact, one of the investigations that I cited in my opening statement involved a \$18 million contract paid from CERP funds for the design and construction of a road in Logar province. We're currently investigating a hospital reconstruction project involving CERP funds, and it's in excess of \$8 million to \$9 million.

So it's grown much larger, I think, than the CERP funds should provide utility to us. I understand there is a need for cash in-country in the commanders' hands is to gain relationships with the locals for cooperation and to establish goodwill and help the military and the civilian reconstruction effort in those areas. But I think we need to size it down a bit and keep more accountability and internal controls in effect.

SCHINASI:

Ms. Cruz, let me just preface my question to you. In your statement, I think page four, perhaps, you talk about a CERP program where South Korean military personnel were responsible for administering the CERP program.

That seems to me to be a group that we haven't talked about in terms of being able to go after, you know, foreign militaries or foreign governments, going after wrongdoing. So would you include that in your answer, too, please? How did that happen?

CRUZ:

In that case it was an inspection that we began. And our inspection uncovered the case in which the Korean PRT members, the provincial reconstruction team members, were misusing CERP. And so, we were able to coordinate with Korean officials and have them conduct basically an Article 15, I guess, a military trial and convict the individuals for misusing the CERP funds.

But on the CERP issue, I think that you've pointed out a very key issue that needs policy attention. The CERP program has evolved dramatically in the last five years. And I think all of the changes to it have been very good. But the policy that is used to describe how you use CERP is called money as a weapons system.

And something that we constantly like to remind generals is when you're going to deploy a new helicopter to the field, you're going to make sure that you have the, you know, operations and maintenance manuals, people know how to fly it, you have enough fuel, you have enough oil. You need to do all the right things to make sure that that helicopter gives you good use.

Well, if money is going to be a weapons system, it also needs internal controls. It needs accountability. It needs war fighters that do have the skills and the capability to be able to handle that money appropriately.

We also have found multiple cases of CERP fraud. The arrest that's going to occur today is CERP-related. We have an increasing number of CERP-related cases. And that's directly related to the lack of internal controls, the lack of a program office, the lack of the structures that are there that bureaucracies create in order to make sure that there's accountability for the money.

So we strongly support CERP. It's great program. It is needed by the troops in the field. But it must be accompanied with accountability, controls and appropriate safeguards that prevent it from being a source of theft.

SCHINASI:

Thank you.

I want to also go back to something that Commissioner Tiefer touched on with conflict-of-interest provisions. The Office of Government Ethics just last month felt the need to issue a memo on the applicability of personal conflict-of-interest provisions. And apparently without naming the cases, there have been many, many waivers granted to that piece of law and waivers granted after the fact, not as they're supposed to be, come in before the fact, before waivers to personal conflict-of-interest statutes are granted.

One of the things that we've seen in the workforce looking at Iraq and Afghanistan is a large number of personal services contractors who are either hired appropriately—the Department of State, many of the bureaus have the ability to do that or inappropriately, as the GAO has reported in many of the DoD offices. And so, my question would be: do the personal conflict-of-interest laws apply, from your perspective, to personal service contracts. And if it's not clear, would it be useful for the Office of Government Ethics to restate in a letter that those provisions do apply to personal service contractors?

Mr. Burch?

BURCH:

I would like for them to restate that in a letter so that it's clear. I mean, on the surface it seems that if there's a conflict of interest, there's a conflict of interest. So, yes, I would like to see that defined even more.

SCHINASI:

OK. Thank you.

Mr. Perkins?

PERKINS:

Yes, I agree. Any amount of clarity we can add to that and to push that out would be very helpful.

SCHINASI:

OK.

Mr. DiNunzio?

DINUNZIO:

I agree with my colleagues. It's essential. As a matter of fact, I think that personal service contracts that are awarded on the basis of anything other than the qualifications of the contractor is a recipe for disaster. And we've seen that in many of our investigations, particularly in the security area.

SCHINASI:

Thank you.

Ms. Cruz?

CRUZ:

We've also found that contractors managing contractors makes that even more important. When you don't have enough government employees in the field and you have this haze over the

question of inherently governmental functions, the need for very strict conflicts-of-interest applicability to contractors is even more important.

SCHINASI:

Thank you.

And my time is expired.

SHAYS:

Thank you very much.

All of you deserve compliments. And we thank you for your service. But I feel like we are at the edge of talking about substantive issues but not getting into them. And I am trying to figure out why. I mean, is it that we don't want to offend the Department of Justice that ultimately is the one that decides whether your work succeeds or fails? And I suspect part of it is that.

The bottom line is fraud and abuse pays most of the time in contingency contracting. You can get away with it. Some are investigated. Few are prosecuted. So you are all doing the best you can, but you don't have the resources to do the kind of work you need to do.

Ms. Cruz, I am somewhat impressed that your investigations are being prosecuted. But it's not lost on me you have three very skilled personnel at DOJ who have that expertise. So they're going to carry the ball for you.

If they weren't there, who knows what would happen? I mean, that's the reality.

Now, we all are on the same page. We all want to lick this problem. But I don't get the feeling that we are getting the kind of cooperation that we need to get from justice.

And, Mr. Perkins, I appreciate you being here. But you're FBI. You're not the policy person. You're not the one that decides whether we prosecute. And you're not the one who decides what kind of resources are available.

We don't have enough resources available. That's a fact. It is not a priority of DOJ's because they have lots of priorities.

Part of our concern and part of —and I don't use this word often—frustration is that we are trying to get basic information from justice. And we're not getting it.

So we had—and this is to DCIS. Mr. Burch, thank you for sharing your monthly statistical reports with us. We also have data on the numbers and outcomes of cases from the other

witnesses as well. However, we found that because investigative organizations work together on cases, they tend to count the same cases.

So, Mr. Perkins, we understand the International Contract Corruption Task Force, which the FBI supports, maintains the master database on information about all the cases its nine partner organizations are working on. Is that correct?

I'm sorry. Nodding a head doesn't go in the transcript.

PERKINS:

I'm sorry, yes, sir. That's correct.

SHAYS:

We have requested that consolidated data repeatedly. Are you aware of that?

PERKINS:

I'm aware a request was made. I did not know it was repeated. And we will . . .

SHAYS:

Is there any reason that the International Contract Corruption Task Force joint operations center cannot provide us with that consolidated data on cases?

PERKINS:

None that I'm aware of, sir.

SHAYS:

OK. Now, walk me through this. React to it and without mentioning staff names. On December 8th, we made verbal requests to the FBI for fraud statistics held by the International Contract Corruption Task Force. We were assured the data would be provided.

On January 11th, our staff and team met with the ICCTF coordinator, and we took detailed notes of that information requested. We still don't have it. Between December 8th and February

2nd, follow-ups occurred with our staff. We were assured that this response would be forthcoming.

After repeated inquiries the commission was informed that official requests must be made. So we made an official request. We had our executive director write a letter of February 2nd, which we'll put in the record. It has two pages of questions. We were told that we got some of this verbally when we asked what gives.

On March 3rd—this letter was dated on February 2nd—on March 3rd we sent repeated requests for this information. It wasn't provided. On March 8th we sent an e-mail to legislative staff requesting this information, told the reply would be imminent. No reply received.

On March 22nd to 25th, counsel and I were at a conference dealing with training of investigators. We were told that Justice was uncomfortable that we were present and that it would impede their being candid at the conference. So we left.

We wrote a letter admittedly this last week reiterating and wanting this information that we had requested. And we still have no response.

I can't for the life of me understand why Justice would be reluctant to share statistics unless they don't like what the statistics say. And so, my recommendation to this full commission is going to be if we don't get this information soon, we are going to ask, I am going to request that we subpoena Justice to provide this information because there is no logic to it.

Tell me why you think we would have such a difficult time getting these statistics, Mr. Perkins.

PERKINS:

Sir, I do not know why you had difficulty in that. But you have my personal assurances I will provide and make sure that information is made available to the committee and to the commission.

SHAYS:

Thank you.

PERKINS:

Yes, sir.

SHAYS:

On our next panel we will have the IG for DoD come, Ms. Ugone. And they have put together a document that is entitled, "Contingency Contracting: A Framework for Reform." It's a very impressive document.

And while you can't see the written words in those two charts, one of those charts is key aspects of contracting process, pre-award, award, contract administration. It's a big foldout. And the red is the repeated findings.

They had 34 investigations, excuse me, 34 audits, I think, and 19 investigations. Repeatedly the same issues came up.

The second foldout is entitled, Fraud Indicators and Poor Practices in Relation to the Contracting Process. It's broken up the same way they did the other: pre-award, award, contractor administration. Every one of those phrases gives you an indication of where potential fraud can exist.

Let me ask, do any of you have a way, metrics, to describe the value of having the staff necessary to investigate fraud and prosecute fraud. How do you know what you need to ask for?

I'll start with you, Mr. Burch.

BURCH:

What we are doing at DCIS right now is being sure that what we do have is being put in the right places to investigate fraud. We understand that we're guaranteed no other resources. We will ask for them. But the most important thing I'm doing is being sure that the taxpayers' money is being spent dollar-for-dollar in the best place we can put it to combat these particular contract fraud and procurement fraud.

So it is kind of an open-ended question as to how much resources do you ask for. What we're trying to do is make a business case for when we get resources we are ready to put them in the right places to do that.

Southwest Asia is our number-one priority. We're going to find ways to get more resources into Southwest Asia, because, as you can see, the more resources we have put there, our case total has gone up, and our investigations have gone up. So resources is a key part of it.

But not directly answering your question, it's a metric that we try and gauge on the number of cases and the production that we get out of our investigators.

SHAYS:

Since my time is running out, let me just ask the remaining three panelists, what metrics do you use, if any? And if you don't have a metrics, just tell us.

DINUNZIO:

Well, Mr. Chairman, we are establishing metrics. We are in the process of putting together forensic capability to look at contract, potential contract fraud as an indicator.

But in law enforcement, particularly in complicated paper cases, such as contract frauds, oftentimes that's not the best place to start. There are other indicators, such as non-performance on a major contract.

But in my experience, and I have 23 years of experience in the FBI, the vast majority of intelligence regarding investigations that have yet to be detected are the result of human intelligence. And I think key and instrumental in being successful in Afghanistan is having people in Afghanistan, on the ground, that are in the presence of those that participate in the reconstruction activity, whether they be U.S. government oversight officials, U.S. contractors, or Afghans that are participating in U.S. reconstruction. That's where we're putting our effort.

Our audit directorate is very aggressively pursuing the forensic capability. And where there are indicators of fraud, we will be conducting forensic audits of those. If we detect irregularities or improprieties and contracting fraud, those matters will be referred to my investigations directorate and we'll pursue them fully.

SHAYS:

Thank you.

Ms. Cruz?

CRUZ:

Mr. Chairman, I believe we have provided all the members of the commission with some charts that give you an indication of the numerical productivity of our office.

We have a forensic effort that is underway. And that allows us to judge the universe of cases that are potentially out there. And then, due to selective prosecution of some of those cases, we look at the value.

So, it's a combination of the numerical metric of the cases that we have before us and a judgment on how much resources we believe we need to be able to adequately pursue those cases.

SHAYS:

Thank you.

For the record, I'm going to submit February 2nd's letter to Ronald Weich from Bob Dixon requesting information, May 20th, a letter from both co-chairs; it has enclosed the questions that we've asked that have not yet been provided.

Also, I'm going to insert in the record the letter to Eric Holder from Mr. Towns. I'm going to just read the first paragraph.

“For several years, the Committee on Oversight and Government Reform has investigated waste and fraud in government contracts, and has been especially concerned with repeat offenders. The establishment of a National Procurement Fraud Task Force in the Department of Justice to focus on this issue was a positive development. However, recent press reports about DOJ's enforcement actions against large government contractors raise concerns that the policy goals of eliminating waste and fraud are not being met. First, the committee is concerned that settlements of civil and criminal cases by DOJ are being used as a shield to foreclose other appropriate remedies, such as suspension and debarment that protect the government from continuing to do business with contractors who do not have satisfactory records of quality performance and business ethics.”

And then it just concludes, second, “The committee is concerned that companies that have previously avoided prosecution through settlements with DOJ have again violated the law without consequence for breaching previous settlement agreements.”

With that, I'll insert in the record, with no objection.

And we'll go to you, Mr. Ervin.

ERVIN:

Thank you, Mr. Chairman.

Let me pick up where the chairman left off on this whole question of metrics. You, Ms. Cruz, spoke to that, and you did, Mr. DiNunzio. But I'd like to hear from Mr. Burch and Mr. Perkins about that.

The more I thought about this issue of metrics, the more for me to dust off my philosophy courses from graduate school, and pose an ontological question. You know, you guys are taking—you're spinning the straw of limited resources into gold—a rising number of investigations and arrests and convictions. And that's terrific. That's to be applauded.

But one could argue that that's ultimately a bad news story, because it suggests that there's an increasing incidence of fraud going on in the war theater.

And so, what metrics besides these numbers, if any, are there to get at the universe of fraud? I would argue that forensic auditing is a tool, really, as opposed to an outcome as to what the total universe of fraud might be.

BURCH:

Well, in police work, you have to be where the crime is being committed. And in Afghanistan and Iraq is where some of the crimes are obviously being committed.

We're also a member of the Rock Island Arsenal Task Force where the LOGCAP contracts are being monitored. And the U.S. Army has also put—any contract over \$1 million will come through there. And I know the U.S. Attorney's Office there has gotten a venue for prosecution pursuit of these cases.

So, a dual answer: Be where the fraud is being committed, and also be where the contracts and the documents, and so forth, can be retrieved as expeditiously as possible.

ERVIN:

Mr. Perkins?

PERKINS:

Yes, sir. And this goes for this particular subject matter, as well as across our entire investigative body of work.

We look at where the threat is, what the threat consists of, what the strategy you have to put together to address that threat. And in the end, what are the measures or metrics that you're going to say to yourself, I have success here?

And you're correct. The arrests, indictments, convictions that the bureau has followed for many, many years—those are lagging indicators. We're looking for the forward end of things.

For instance, in a gang case, are truancy rates dropping in area schools, because kids aren't afraid to go to school anymore as the homicide rate dropped.

Similarly, along the lines in contracting fraud, we look at issues such as the volume of criminal activity identified through audits. We look at a number of different items along these lines to help us determine where to best place our resources. We know we have high-dollar volume, for instance, you know, billion dollars going into the countries.

Looking forward, we're actually trying to look at where are other areas beyond Afghanistan, Iraq, Kuwait, where this could be happening in the future. Where should we be prepositioning our resources? What are we doing to try to identify the threat that's over the horizon, so that we can preposition ourselves in the budgetary process, for instance, and other areas to where, when that threat hits our shores and hits our investigative shores, we have the resources and bodies in place to address it?

ERVIN:

Thank you.

Ms. Cruz, you mentioned in your testimony that, commendably, you deal not only with main Justice, but you also go to AUSAs [Assistant U.S. Attorneys] who might be likely, for whatever reason, to take these.

Can you elaborate on that a bit and explain the factors—presumably, geography is a factor—that you take into account? There presumably is some geographical nexus when you go to a particular AUSA.

What other factors do you weigh in determining which AUSAs to approach with regard to a particular case?

CRUZ:

If you would indulge, I would prefer that our assistant inspector general for investigations do that, since he's . . .

ERVIN:

Sure.

CRUZ:

. . . directly involved in that process.

SHAYS:

You know, it's a good thing that he's doing that, because I was going to ask you to close the meeting and summarize everything that you had just heard. So . . .

NOVAK:

I'll be glad to.

ERVIN:

And briefly, please.

NOVAK:

Yes. The agents we've picked up over the last couple of years have close ties with the U.S. Attorneys offices. I mean, they worked in those particular areas. Those are the individuals that we hired, because the workload was there. They can call up AUSAs directly on the phone and say, I've got something. We want to move it.

So, the primary factor that we look at in taking cases to U.S. Attorneys offices are the speed at which they'll take the case and move it along. And that's primarily the reason.

ERVIN:

Mr. DiNunzio, I was interested in your having on page two of your testimony drawing the distinction between fraud and corruption. Could you explain why you distinguish between the two? Do you regard them as different, legally?

DINUNZIO:

Sure. There's a lot of talk about the anticorruption initiative in Afghanistan. And the term corruption has a different meaning in the Afghanistan culture than it does in the U.S.

In the U.S., corruption is public corruption. It involves a public official and abuse of their authority by virtue of the position that they've been appointed or elected to. Fraud can involve a

U.S. contractor, an Afghan citizen. It's the nature of the person committing the crime more than the crime itself.

ERVIN:

Thank you.

And one final question, if I may, to anyone of you who'd like to answer this. Do you think there's some optimal ratio in a contingency environment, the amount of money spent and the number of investigators and prosecutors devoted to investigating that amount of money? Percentage?

BURCH:

I don't have an answer for that. I don't know if there is an optimal percentage. I think it just depends on the crime and where it is and the complexity of it.

ERVIN:

Anyone else?

CRUZ:

Sir, I would suggest that I think that we've reached close to optimal in the year 2010 with the combined efforts of all of the different oversight organizations that are finally on the ground. I think we all felt that the effort was deficient in the early years. And I think that the effort now seems to be very well coordinated. And I think there's enough people on the ground now to handle the amount of corruption out there.

So, one of the ways to answer that might be to take the total amount of personnel on the ground in Iraq today, which, in terms of investigative personnel, is probably around 25, if you summarize all of the different entities and divide that by the amount of money that's currently being applied, which is about \$8.5 billion, and suggest that that could be a metric that could be considered.

ERVIN:

Thank you.

SHAYS:

Would the gentleman yield?

I want to be clear as to what you say: you have all the resources necessary. The resources to investigate, or the resources to prosecute?

CRUZ:

We have the resources to investigate. And at the moment, we are satisfied that the prosecution pipeline is sufficient to handle the cases that we are investigating.

SHAYS:

That you are investigating.

CRUZ:

That we are investigating.

SHAYS:

Thank you.

ERVIN:

Thank you, Mr. Chairman.

SHAYS:

Dr. Zakheim?

ZAKHEIM:

Ms. Cruz, you, in your testimony and both oral and in your written testimony, you talked about these Korean administrators of CERP and how you caught them out.

First of all, you know, when I was comptroller of the department, CERP was about a factor of one-hundredth, literally, of what is being spent today. It was nothing like \$18-million contracts.

Do you think it's wise to have foreign folks, whether military or civilian, managing American taxpayer CERP contracts?

CRUZ:

If there is a program in place, and if there are adequate internal controls in place, then I think any program is possible. In this case, CERP was deficient on its face as a U.S. program. The judgment of having foreign individuals involved in the management, I think left something to be desired.

ZAKHEIM:

But since we heard from Mr. Burch, and I don't think any of you disagreed, that CERP as a cash program is prone to all kinds of hi-jinks, given that, your two conditions can rarely, if ever, be met. Isn't that correct?

CRUZ:

If there was significant improvement to the program, I might have a different opinion. As it was constructed at the time that the crime occurred with the Korean individuals, I would agree, they should not have been handling it.

ZAKHEIM:

So, would you recommend that Congress limit the management of CERP to American oversight until such time as the kinds of conditions you're talking about are met across the board?

CRUZ:

That would take a little bit more consideration than I could give here. But it doesn't sound like it would be a bad idea, sir.

ZAKHEIM:

Not a bad idea is OK for me right now.

Let me ask you, Mr. Burch, actually, all of you. By and large, when a prime contractor takes on subs, the prime is liable for the behavior of subs. Isn't that correct? Am I wrong?

Evidently I'm not.

So, then, when I look, for example, at this list of names in this booklet that Chairman Shays already referred to, on page 42, DCIS prosecuted investigations from '07 to 2010. And I look at some of these companies. AEY Incorporated, Northern Reconstruction Organization, Naweed Bakhshi Company, AZ Corporation, Top's Construction—they're not household names. In fact, they're not even household names in the contracting community.

They sound to me like a bunch of subs. Am I wrong?

BURCH:

I believe you're correct in that.

ZAKHEIM:

OK. Why aren't we holding the primes accountable for these characters? Why aren't we going after the primes, suspending them, disbarring them?

And let me make one point, having spent about 20 or so years of my life as a contractor, a little more than that. Contractors are terrified of suspension and disbarment, if only because that opens the door for their competitors.

So, why aren't we doing that? Why can't we control the subs by controlling the primes? I'd like to hear from each of you on that one.

BURCH:

Well, we simply in the law-enforcement world go after the people that committed the crime. I think that goes back to the contracts and how they are written and what the provisions are in the contracts.

ZAKHEIM:

But if a prime has subs, and the prime signs a contract with you, and the sub does something wrong, and you're in a situation, say, in Afghanistan, where the government may not be

cooperating or the culture is different or all these other kinds of excuses that we keep hearing, what stops you from going after the prime, if you think there's corruption going on?

BURCH:

We would have to develop the evidence to make the connection that the prime had criminal intent and what this . . .

ZAKHEIM:

. . . the sub had criminal intent.

BURCH:

Right.

ZAKHEIM:

And the prime is responsible for the sub, correct?

BURCH:

Well, I don't think in a criminal procedure . . .

ZAKHEIM:

OK.

BURCH:

. . . that that may not be...

ZAKHEIM:

But wouldn't that be enough, though, to suspend a prime, if the prime has subs that are criminals?

BURCH:

We would present the facts of the case to the suspension and debarment officials, and then they would have to make the decision.

ZAKHEIM:

Well, then let me ask the two inspectors general, Ms. Cruz and Mr. DiNunzio, would you recommend that Congress tightened this up so that we could hold primes much more accountable so they can't wiggle out of these kinds of circumstances, and maybe be a lot more careful about the subs they hire, the AEYs of this world and the Naweed Bahkshis of this world, Ms. Cruz?

CRUZ:

I believe, if contracts are well written, that the laws currently allow for the government to hold primes accountable for the misdeeds of their subs.

I think part of the problem in Iraq was that the contracts themselves were not written very well. And so, as a result, there were a lot of loopholes that the prime contractors were able to slip through. So part of the argument might be, if there was more aggressive management and better use of the tools that are currently available, I think you could hold the prime contractors accountable.

The other point that I would make is that, especially as pointed out in Iraq, there is an incredible dependence on a very small number of large contractors. And so, if the government were to swing in favor of suspending and debarring every large contractor for the misdeeds of a subcontractor, you could end up in a situation where the policy loss would be that you wouldn't have contractors able to do the work that you needed in the field.

So I think it's a very difficult balance, but I do think that the law currently allows for us to hold the prime contractors responsible, if the government managers involved write the contracts appropriately, manage the contracts appropriately, document when the prime contractors are not doing their due diligence and keeping the subcontractors accountable.

And so it's that failure on the government's side that makes it more difficult for inspectors general to then follow up and hold the primes accountable for the misdeeds of their subs.

ZAKHEIM:

Do you agree with that, Mr. DiNunzio?

DINUNZIO:

I do agree with that. I think that the contracts themselves permit us to go against the prime awardees when there's non-performance on a contract. Regardless of whose fault it is, the prime is responsible for poor performance on the contract.

We can't impute criminal intent from a subcontractor to the contractor, but we obviously have the civil remedies of suspension and debarment with which to implement some type of an effective consequence to nonperformance on a contract.

One of the questions that was put to the witnesses here, I believe by the commission, we didn't speak of: is the contractor too big to fail. And I think Ms. Cruz may have just touched on that in her statement.

In terms of the U.S. interest in Afghanistan, I think we may be precariously approaching that, where if we end up debaring a company that is instrumental in the reconstruction of Afghanistan, we may bring the entire reconstruction effort to a grinding halt.

ZAKHEIM:

Well, let me just point out that too big to fail practically wrecked this economy of ours. And I think, if we worry about too big to fail, particularly as there are more than one contractor always bidding, if we worry about too big to fail, we're going to fail anyway.

SHAYS:

Mr. Green?

GREEN:

Thank you, Mr. Chairman.

Ms. Cruz, acknowledging some really wonderful and great work that SIGIR has done over the past few years, at some point you're going to go out of business. And I would like to hear from you what transition efforts and initiatives are underway to transfer to the other IGs the work that you have done.

CRUZ:

Thank you, sir. We have had a closure and transition plan prepared and actually distributed since 2006, since our organization has almost closed six times in our lifespan.

We are in the process right now of, once again, updating that closure and transition plan. And we have very robust ideas about how we're going to conclude our work. We are finding homes for all of the work that must continue in Iraq, and we are finding homes for that work within all of the permanent inspector general offices.

We are currently in the process of working with the Department of Justice to figure out the endgame for the SIGPRO initiative. We do believe that the prosecutors that we've helped hire and place at the Department of Justice will be of great benefit to the Department of Justice in the future, not only for Iraq, perhaps for our sister organization in Afghanistan, as they develop skills at the Department of Justice to be able to specialize in overseas contingency fraud.

So we are looking to the Congress, and we are looking to the permanent entities to transition with us over the course of the next several years, as our work winds down, and to pick up the work that we are going to be completing.

Some of the linchpins in what we're trying to do, as we're finishing our work, what we would like to do, what we hope to do, is work with the permanent inspectors general to pick up some of our staff, the last bits of our staff, and detail them back to SIGIR so that we can finish off those last critical cases that we're able to finish off, and those that we're not able to finish off would then be transitioned in total, both audits and investigations, to either the State Department inspector general or the Defense Department inspector general.

GREEN:

I assume that you've identified which of the permanent IGs are going to get which piece of the pie?

CRUZ:

At this point, we have so many active cases and still about two years left in us, so we're going to continue to do as much work as we can, but State and Defense inspectors general would be the two locations.

GREEN:

OK, thank you.

Mr. DiNunzio, how has SIGAR incorporated into its work the lessons learned and developed by SIGIR?

DINUNZIO:

Well, in a number of ways, Commissioner. First and foremost, we wholesale adopted SIGIR's investigative policy as we evaluated for suitability in Afghanistan. And so a lot of the things that were put in place initially by SIGIR as they approached the mission and the challenge of Iraq we've adopted.

One of the things that we are looking at now—in fact, I've had a meeting with the assistant attorney general regarding the SIGPRO concept. I know that's not something that was documented in the lessons learned, but it is something that we're facing, as well.

With the Department of Justice stretched thin, we need to make sure that we have adequate prosecutorial resources in place to handle the influx of cases that I anticipate we'll be bringing forward.

There are a number of other things in Iraq that SIGIR has led the charge on. One of them is the concept of some type of a forensic auditing capability. And we are very aggressively pursuing, as I stated earlier, that same capacity; in fact, we are using it now to look at a number of contracts involving the very important security fund.

GREEN:

OK. In the interest of time, let me get to my last question and see which one of you wants to answer it. And that is, what is your level of confidence that the lessons learned, the processes, the procedures can be and will be institutionalized to the degree that we will not reinvent the wheel?

And I'm not just talking about Iraq to Afghanistan. I'm talking about the next contingency and the next contingency and the next contingency. When the pressure of the conflicts is over, who's going to care? Who's going to carry this ball to the next crisis?

Ms. Cruz?

CRUZ:

I think the answer at the moment, sir, is no one, but I would qualify that by saying our organization is eternally optimistic that discussions that we have here and the very existence of your commission and other like. . .

GREEN:

We're going to go out of business, also.

CRUZ:

Yes, sir. But what I will say is, over the course of your lifespan, over the course of our lifespan, there has been a dramatic change in the dialogue that goes on. And I think that there is every reason to hope that the Hill will recognize the need for substantial change and will institutionalize some of the lessons that have been learned through the really awful loss of life and the waste of many billions of dollars.

GREEN:

Mr. Perkins, you're raising your hand, so I assume you want to answer, too?

PERKINS:

Yes, sir. I think a little bit of a different approach to that, in that the [International] Contract Corruption Task Force, which has membership of nine different agencies—and I realize that can increase or decrease as needed—is a permanent entity within the Bureau.

I have permanent staff that is going to go forward Iraq, Afghanistan, Kuwait, and part of our outward looking is, where's the next stop? Because it's happening. We're working closely with other agencies within the U.S. government.

So if there is to be one central location that would have, let's carry the lessons forward with the same people and the same lessons learned, I would put on the table that that would be the entity.

GREEN:

Thank you.

Anyone else?

DINUNZIO:

I would just echo what Assistant Director Perkins has mentioned. The International Contract Corruption Task Force has as members SIGIR and SIGAR. It will move forward with the U.S.,

and it is well populated with the permanent inspectors general offices, to the extent that they need resource enhancements or additional funding or appropriation to handle contingency operations or, at a minimum, carry the water until something escalates or elevates to the size of what we're doing in Iraq and Afghanistan. That's where it will occur, through that joint task force effort, and it is a permanent organization.

GREEN:

OK. Thank you.

SHAYS:

Thank you.

Mr. Tiefer?

TIEFER:

OK. I want to echo Chairman Shays' disappointment on the type of information we've been receiving from the Department of Justice.

And I want to say, Mr. Perkins, I've worked closely with the staff on this. It was a year ago that I sat down with Mr. Linick, and we have not gotten, to my knowledge, any interviews of the Department of Justice people on this matter.

I wish you would treat us —first of all, I wish you would give us a real contact, someone who's in a position to say yes—because the Department of Justice congressional people aren't, someone close to Mr. Linick or Mr. Linick himself who will return our phone calls.

And I want to particularly say, I wish you'd keep with us the rules that apply to congressional committees rather than your own very high barrier. I was general counsel of the House, or someone who was going to be promoted there, for 11 years. I know what those rules are. Closed cases we should get to see. Civil cases, if they're closed, we should get to see and even opened cases.

There's a limited amount of information that doesn't get in the way of an open case. Justice traditionally wants to keep the high barrier for the openness of criminal cases, so it lets things down over there. They're not grand jury material at that point, and they're not under a qui tam seal.

So I don't know why we've been held so far back by that. Can we see, can we interview the people who have worked on closed criminal cases, Mr. Perkins?

PERKINS:

Commissioner, I will make every effort to personally assure the commission that you will have access to the documents and the individuals that you need to conduct your operations.

TIEFER:

That's great. Mr. Perkins, that was very handsome.

Mr. Burch, we asked a bunch of questions at the end of our briefing, and we got the back of our hand on that. We were told, oh, the number of civil cases? See slides three and four. Statistics on the number of DCAA referrals? See slide five. Ask that we determine and report on the number of cases referred for suspension and deployment? See slides three and four.

Do you really think—there's not a person in the world who knows me who thinks I ask for things we already have. I've seen the table of results that are in there, and the table of results does not include any, not one, of the things I just mentioned. Are we going to get those statistics in a timely fashion?

BURCH:

Yes, sir, you will. I apologize if that was submitted and confused the issue. We certainly will submit those to you.

TIEFER:

I hope the people who've thought I was a pussycat will retract that statement—any chairmen who have thought that, for example. OK. That's that.

Let's get something else. OK, Mr. Perkins, of the FBI here: speaking for the Department of Justice. I'm looking for other legislative proposals that I think you might be able to go along with us on.

There was a proposal of the fraud task force, you know, the legislative one—the white paper: Do you know what I'm talking about, the national fraud-task force releasing a white paper about a year or two ago?

PERKINS:

The national procurement-fraud task force, sir?

TIEFER:

Yes.

PERKINS:

I'm not specifically with the white paper, but . . .

TIEFER:

OK. Well, one of the things it asked was that sentencing guidelines be amended, federal sentencing guidelines, to consider the value of contracts and grants affected by fraud. It asked for that. If we recommended something like that, would you support it?

PERKINS:

Yes, sir. I believe, speaking from the FBI standpoint, and I can assume from the department's standpoint, that amending the sentencing guidelines along the lines of fraud would be beneficial.

TIEFER:

OK. I appreciate that.

Sorry. As far as suspensions and debarments, which is what I think I now want to ask about—I'm sorry, Mr. Chairman.

SHAYS:

Take your time. Don't rush.

TIEFER:

OK. All right. Mr. Perkins, the questions that were asked by chairman of a House committee on this subject, which were very important, were about whether in a case like the giant case you just filed, the false claims, that case against KBR for its armed-subcontractor violation, would you consider referring such a case for suspension and debarment before the case is resolved?

And, number two, are you going to consider, when you make a settlement with that case, ruling out any suspension or debarment, which should be decided by the Department of Defense, not you?

PERKINS:

Again, attempting to speak on behalf of the department for this matter, I believe it would have to be—the individual effort on this investigation would have to be taken on their own. The prosecutors would have to make those decisions, depending on how the case goes forward. And I really wouldn't want to speak for the department on this behalf, on this specific matter, without having further chance to review their case.

TIEFER:

I take that as you may continue the pattern in the past of negotiating and settling without allowing. Well, would you object if the Department of Defense decided that this represented, this issue, the armed subcontractor issue, which, after all, they made the original—the DCAA made the original referral on at the same time that they asked for what is now over, slightly over \$100 million on this issue.

Would you consider letting the Department of Defense decide that this is negative past performance and is applicable to the responsibility, as a precise procurement term, of KBR, given that KBR keeps winning contract after contract, especially it's still getting sole-source contracts?

SHAYS:

We'll look for a short answer on that, and then we'll get to the next one.

PERKINS:

Yes, sir, Commissioner, I think that the shortest answer on that one, that would be that would have to be something that individuals within the department would have to negotiate and discuss

with the department. I would have no objection to that taking place, but that would be something that they would have to work out between themselves on this matter.

SHAYS:

Mr. Perkins, I just want to say, I realize you're in a different spot, given that you're being asked to answer questions that don't directly you have oversight [of], but we appreciate your candidness. Thank you.

PERKINS:

Yes, sir.

SHAYS:

Mr. Henke?

HENKE:

One of the issues we're going to explore with the next panel of standing IGs is this notion of—Ms. Cruz, you put it in your testimony as your first recommendation—to have investigative capability, oversight capability more broadly, present at the outset of a contingency, or a SRO, stabilization and reconstruction operation.

Not surprisingly, the standing IGs in their testimony, and we'll hear from them shortly, all say we don't need another entity. We can do that. That's our mission. SIGIR and SIGAR may think differently because you were stood up with a focused mission and a term-limited mission.

I guess the observation I want to make and get your quick response to what it is, I think we might be agnostic to whether there is a standing IG for contingencies on the shelf with 100 people in case we have a contingency or if we have the capability just to get there quickly.

What I'm struck by is: 2001 Afghanistan, 2003 Iraq, and then an unfolding over the years subsequent to that of capabilities and offices. No disrespect. DCIS agents in 2006; ICC task force, 2006; SIGAR created in law, 2008, '07? Ms. Cruz, 2003 or '05, I believe?

My point is that if it's late to the game you're basically yielding the initiative on oversight, and the way you phrased it, Ms. Cruz, in your testimony was just the capability to be there, present, and to be preplanned and ready to go. I think that bureaucracies tend to do the day-to-day well,

but they also tend to be by nature slow to react to new circumstances and new situations. And that's basically what a contingency is, by its name.

But I think if it's an afterthought and years into it, we're behind the game and we've yielded the initiative. So the point is that it has to be ready on day one and preplanned. Could you individually react to that?

CRUZ:

Let me just give one quick anecdote. I took a trip down to a prison in Virginia, where Robert Stein had been put away for nine years. He was one of the first people that we put away. And as part of our research for our *Hard Lessons* book, I asked him, what was it that made it easy for you to steal the money that you did, that landed you here in jail?

And he looked at me and said, you know, if there had been someone there, if I knew someone was looking, I probably would have thought twice. But I was in Hilla. You know, I had \$80 million in a backpack. It was crazy; it was a warzone. I knew nobody was looking, and so I did it.

And this is the man who's now serving nine years. He was on a suicide watch at the time, and he really regretted it. But he was being honest about it.

And it struck me, because I think that issue is really important. I think, as Commissioner Green pointed out, the deterrent effect doesn't exist unless you're there on the ground, unless there is a possibility that someone is going to get you.

It doesn't mean we'll catch everyone that's doing it, but if there's a possibility that there's someone on the ground who's looking, who's watching, who someone can talk to, the people are just more careful.

There's an old saying in anticorruption that says people are good, but they're better if you're watching them. And I think I would just say that in contingency operations, which I pointed out are much more susceptible to fraud, waste, and abuse, we think it's absolutely critical to have investigative capability on the ground from the outset.

HENKE:

Mr. DiNunzio?

DINUNZIO:

Well, you won't get an argument that it's important to be there early on in a reconstruction or a nation-building effort. In our case, in SIGAR's case, six-and-a-half years subsequent to our entry into Afghanistan, and then not fully funded for an additional year-and-a-half, I think we can stand up fairly quick and have done that with the investigations directorate of SIGAR. I reported to SIGAR in late September, so the beginning of the new fiscal year.

And we're very aggressively building the investigations machine there. I think we can do that if we're adequately funded. I believe the contract task force and the establishment IGs can carry the water in potential contingency environments until it's determined by Congress what type of a response we need, what type of a unique, specific response we need in that particular country.

I don't know that you can establish and implement a one-size-fits-all contingency office. I haven't studied it. But I'm certainly open to looking at something of that nature.

HENKE:

Mr. Perkins, any thoughts on the issue?

PERKINS:

I would just echo Mr. DiNunzio's comments that, again, with the task force, it's built and designed to carry forward, to look over the horizon, to see what the new threats are, to see where the money is going in the future. And it can be something that carries those lessons forward.

HENKE:

Mr. Burch?

BURCH:

We're doing a resource study right now. And what it is is what I related to earlier about building a business case of where we should be.

So our mapping is DoD. Where are the commands? What is the money being spent? Where do we preposition people so that we don't have to respond so much, but we can flow to a problem.

We just opened an office in Korea. We're beefing up our office in Germany. We're looking at the different commands to see where the DoD money is being spent and what are we going to reallocate our resources so that, when these issues arise, not that there's not already work to do, that we can flow to the problem.

HENKE:

OK. Thank you very much.

SCHINASI:

Thank you. I just have a couple of quick questions.

Mr. DiNunzio, Ms. Cruz, in both your statements, you talk about working with foreign law enforcement entities and from what you say, that is going well. I would just like to ask Mr. Burch and Mr. Perkins, do you feel that you get support in working with foreign law enforcement agencies? Is there anything about these contingency operations that have caused you problems in what would otherwise be a relationship?

DINUNZIO:

No, ma'am. I think we have excellent work with our counterparts and partners overseas in all of these operations. I can't think of any one specific issue where we've had problems. We work very closely on a daily basis.

I was in Iraq last month to look at our operations there. And one of my senior managers was in Afghanistan shortly after that looking at those specific issues. And we have no issues to deal with there.

SCHINASI:

Mr. Burch?

BURCH:

Yes, I think that both those host countries are working very hard to raise their level of competency, so they are dependable, and I think we're working very well with them.

SCHINASI:

I know there have been some issues raised about bank-secrecy laws and companies setting up in certain countries because they feel like we can't get to them through the banking. Is that an issue you'd care to comment on, Mr. Burch?

BURCH:

Well, country by country, there are going to be different rules and regulations. And some we have treaties with; some we don't. But where we're finding out a lot of these things is that the suspects, once they are caught, are telling us where the money is or in searches of their computer equipment and so forth, we can identify those things and then try and recover those resources. Sometimes it has to be an agreement with the suspect or the defendant themselves.

SCHINASI:

Because you're not getting cooperation from the country or the country has laws . . .

BURCH:

Depending on the laws, that's correct.

SCHINASI:

Yes, Mr. Perkins?

PERKINS:

Yes, that's not a unique issue to this type of contracting fraud. That's something we face across the board in all of our investigations. Yet we still seem to have some pretty decent success in a lot of these areas, and it's working with our international partners to make that happen.

SCHINASI:

OK. Mr. Perkins, staying with you, you mentioned particularly fuel theft in your statement as something that's of real concern. And I think it's certainly been a problem in Afghanistan, as well.

Have you made recommendations? Do you make recommendations back to the department? Have you seen the Department of Defense making any changes in the way it manages programs, such as fuel, where you have found there are real problems?

PERKINS:

I don't have specific examples where they have changed their policy or efforts, but from my viewpoint, I know my colleague can probably speak a little closer to the issue. But it does require education, training, and strict law enforcement along those lines to send that message, but I would defer to my colleague as far as specific instances within DoD and the operations, what they've done to address that.

SCHINASI:

Let me go to Mr. DiNunzio next on that one, because you've also mentioned fuel in your statement as a real problem. Have you seen changes in the way the department manages those programs which would make them less vulnerable to the fraud that you've uncovered?

DINUNZIO:

Well, we haven't implemented or recommended changes. Some of the fuel contracts that the SIGAR was involved in early on were probably not appropriately involved in, because we have to be very careful that we stay within our mandate and our lane.

And anything involving Department of Defense or military-operations funding is not in SIGAR's mandate. So we did look at a few fuel cases, but the vast majority of the cases that SIGAR is moving forward, if they have a fuel component or element to the investigative strategy, we defer that to our members on the task force who have jurisdiction over those matters.

SCHINASI:

OK.

Mr. Burch, would you care to comment on that?

BURCH:

I don't have a direct answer to your question.

SCHINASI:

OK.

Ms. Cruz?

CRUZ:

We generally don't cover this. We had a small audit on fuel, but it was a much, much smaller issue, and in that case, the State Department management of fuel and KBR. And I think we did see improvements in how that was managed following the recommendations made by our audit.

SCHINASI:

OK. I'd just like to close, probably, with one other comment and a question, but back to the issue of suspension and debarment and the idea that transparency is often, you know, a deterrent in and of itself.

How widely are you publishing suspension and debarments? How is that information gotten both between agencies and to the public? How long is that information kept in the public record, with the idea that that is a tool that we have not to punish, but to protect the government's interest?

So I'd like each of your positions on whether we're doing enough to put the names of the people and the names of the companies out there when they are subject to the administrative kind of remedies that we have.

DINUNZIO:

If I might respond, Commissioner, we have already implemented a request for a suspension of a major contractor and a very large \$300-million reconstruction project. The contract involves an investigation that is continuing. It's an ongoing, pending matter.

We did recommend the suspension of a prime awardee in that contract. We did not publicize it other than in our quarterly report. We did not go out to the media with that, because it is an ongoing matter.

However, we simply make recommendations for suspension and debarment. We don't have the ability or the authority to implement those. And so it's a very valuable tool to us, and it's an important tool for the law enforcement mission in Afghanistan.

Without taking too much time, almost every case of SIGAR's is a criminal and a civil prosecution running parallel. We always put emphasis on the criminal prosecution for wrongdoing. However, in the event we don't reach that level, we always defer then to our civil investigation and use the remedies that are available to us.

SCHINASI:

My time is up. I would just say, an example would be a hearing like today, to have attached to your statements, those lists of people and companies, you know, who you have found to be the perpetrators of wrongdoing, might be a useful thing.

CRUZ:

If I could just add, we do publish the complete list of Iraq suspensions and debarments, and we roll up the input from all of the different entities, so it's not just SIGIR. It's everyone in the Iraq theater. And we do publish those.

We also promote those with the media, as well, so when we can get them to cover it. I think they've covered it once or twice in the *New York Times*. We do try and get more coverage on that.

SCHINASI:

Thank you.

Thank you, Mr. Chairman.

SHAYS:

Thank you, Mr. Burch and Mr. Perkins, Mr. DiNunzio and Ms. Cruz, we all appreciate your public service, and we know all of you to be incredible public servants. You work for less. You've got long hours. And you get a lot of criticism. And so we thank you for your service, sincerely.

We are wrestling with the fact that the investigative side can be very frustrating, because you can do your work, but in the end, what's the point if it's not going to be prosecuted?

We know from private meetings with all of you, not you individually, but your organizations, that you have to be a salesman to Justice in order to get them to prosecute. And, obviously, a good salesman has a good product to sell.

With you, Ms. Cruz, your organization decided you actually had to have people in house, in Justice, because Justice is overworked—that's an obvious fact—and they're going to make choices.

So, one, is this something that you would recommend for other investigative units? We have 29 that get involved, 9 in particular. Is this something that you would be recommending?

CRUZ:

I believe, in the case of overseas contingency fraud, since it is such a unique jurisdictional issue, that there would be benefit in a continued element in the Department of Justice that specialized in this. I can't speak to the wider group.

But I can say from our perspective that, you know, for example, there's a specialization area on Foreign Corrupt Practices Act, and, you know, there's a group there. They specialize in Department of Justice, and they pursue those types of cases.

When it comes to overseas-contingency fraud, which is really what we're looking at, heretofore there has not been an element within the Department of Justice that focused on that.

So I believe that consideration could be given to looking at the long-term benefits of establishing something like that within the Department of Justice, over the long term, which would then eliminate the need for our organization or anyone else to have to supplement, but, in fact, there would be an inherent capability in the Department of Justice that would specialize in and focus on overseas contingency fraud.

SHAYS:

Mr. DiNunzio, are you all considering doing the same thing?

DINUNZIO:

We are, Mr. Chairman. I would prefer to see a supplemental appropriation for the Department of Justice to prosecute contingency operations. I never anticipated that with SIGAR's limited budget that it would be considering the funding of prosecutors for the Department of Justice.

However, if it's something that's necessary for us to be successful in our mission, then I'm completely open to that, obviously. Whether it's a temporary fix or whether it's something that we have to do permanently remains to be seen. But I think the more appropriate approach would be for a supplemental appropriation for the Department of Justice to fully staff all contingency operations.

SHAYS:

Thank you. The International Contract Corruption Task Force, I believe, is somewhat ad hoc. I'm unclear from the testimony we received today whether we have permanent staff or detailed staff to it. And who could speak to that?

PERKINS:

I can speak from the FBI standpoint, sir. I have permanent staff there. I believe I have six supervisory special agents, five intelligence analysts, and another four individuals, administrative support staff, who are permanently assigned to what we refer to as the international corruption unit.

We eventually report up through the national procurement-fraud efforts over at the Department of Justice, but that's the unit at headquarters that is a permanent emplacement. Each of the nine participating agencies also have, I would say, permanent individuals assigned to that. They have a senior-level investigator assigned. Several of the agencies also provide intelligence analysts to us.

SHAYS:

Is this something that you think should be made permanent?

PERKINS:

Yes, sir. I see this as the body going forward that can carry, as we've mentioned earlier in the testimony today, that can carry the lessons learned, that can develop the expertise going forward, that can serve as a central point of focus for the contingencies, wherever they may be occurring across the globe.

SHAYS:

OK. Thank you. Do any of you have any closing comments you'd like to make before we recess for 10 minutes before the next panel?

Mr. Burch, any last comments?

Mr. Perkins?

Mr. DiNunzio?

Ms. Cruz?

SHAYS:

OK, thank you all very, very much. We stand adjourned for 10 minutes.

(RECESS)

SHAYS:

Do we have all our witnesses to begin here?

Mr. Geisel, you don't have to sit down, because I'm going to ask everyone to stand. So if you'd raise your right hand, please.

Do you solemnly swear or affirm that the testimony you will give before this commission is the truth, the whole truth, and nothing but the truth?

Thank you. We'll note for the record that all three witnesses responded in the affirmative, and I'll begin by saying that Mr. Ervin pointed out that this is a great hearing because you all do such great work. As a former IG at State and Department of Homeland Security, he said that without any bias.

All right. We're going to start with you, sir.

Mr. Gambatesa, we'll start with you.

GAMBATESA:

OK, thank you.

Good afternoon, Chairman Shays, members of the commission. I'm pleased to appear before you today to testify on behalf of the Office of the Inspector General for the U.S. Agency for International Development and to be joined by my colleagues from the Departments of State and Defense.

Since I last testified before this commission, my office has completed a substantial amount of work of oversight work in Afghanistan and Iraq, and we have significant work ongoing and planned.

From February 2009 to date, we have issued 12 performance audits with 84 recommendations for improvements and completed 19 financial audits that identified \$206 million in questioned costs, of which \$180 million were sustained. Over the period, we opened 43 civil and criminal

investigations, closed 17 investigations, effected 10 arrests, had three convictions, and secured \$141 million in investigative savings and recoveries for the government.

We have 11 performance audits ongoing and seven more planned for fiscal year 2010. During the past 15 months, we frequently found that agency contractors and award recipients have completed many of their intended tasks and made significant progress toward achieving program goals and objectives.

Too often, however, our assessments also highlighted shortcomings in contract and project management. USAID monitoring personnel are stretched thin in both countries, and they struggle to keep pace with an expanding portfolio in Afghanistan.

Security issues are also a continuing problem in both Iraq and Afghanistan, hindering program accomplishment and implementation. Because of security risks, implementing partners have curtailed or delayed programs and lost critical momentum.

USAID policy emphasizes the need for good data to form the basis for sound programming decisions. However, we have frequently identified problems with the validity and reliability of data used for program management purposes. These and other performance issues place U.S. government funds at a heightened risk of fraud, waste, and abuse.

To address these risks, we have executed a comprehensive plan of performance and financial audits and conducted proactive and reactive investigations. The agency's success in conflict zones over the coming years will be shaped by its responses to two noteworthy challenges.

First, the agency does not have sufficient numbers of qualified personnel on the ground to properly monitor its development programs. The ability to field experienced personnel in the coming months and provide them with the training, facilities, and support they need to do their jobs would have major implications for the success of future development initiatives.

Second, the agency must develop an approach to building host country capacity that balances local engagement with effective stewardship of taxpayer dollars.

USAID is channeling increasing levels of funding directly to foreign governments with the goal of building their capacity to develop and deliver programs that improve the welfare of the people. As many of these governments are still developing the capacity to manage projects and monitor an account for associated resources, this places federal dollars at greater risk. Accordingly, USAID must develop robust approaches to ensure that these funds are expended as planned and contribute to development objectives.

USAID has recently taken noteworthy steps to reduce risks to taxpayer dollars. In February of 2010, the agency established a board to review a subset of proposed awards, including indefinite-quantity contracts, sole-source contracts, and other awards with limited competition.

The board provides guidance on whether to restructure these proposed awards to enhance competition, increase transparency, and expand opportunities for small organizations and for women and minorities.

In May of 2010, USAID also formed a procurement-reform group to examine ways to broaden its partner base and improve the design and delivery of foreign assistance through contracts and grants.

Finally, USAID has committed to doubling the size of its foreign service by the end of 2012, fiscal year 2012.

We will continue our work with USAID to improve its operations in Iraq and Afghanistan and provide effective oversight in these countries. And we believe that the statutory inspectors general already in place can respond effectively to future contingency operations.

We see no need to establish a special inspector general for overseas contingency operations because the inspectors general from the Departments of State, Defense, USAID, and other agencies serving abroad can provide the necessary oversight.

Each of our organizations has an unparalleled mileage of agencies we oversee, and we bring an understanding of lessons from previous contingency operations with us as we assess the progress of new contingencies that arise.

Meanwhile, the Government Accountability Office is well positioned to provide crosscutting oversight of funds appropriated for these purposes.

I thank you for the opportunity to address the commission, and I appreciate your interest in our work and the perspectives on these important topics. I'd be happy to answer any questions you have.

SHAYS:

Thank you, Mr. Gambatesa.

Mr. Geisel?

GEISEL:

I appreciate the opportunity to appear here today, representing the Office of Inspector General [OIG] of the Department of State and the Broadcasting Board of Governors.

Today, OIG can report there are some positive developments. OIG's forward regional presence has significantly enhanced our ability to identify potential savings and cost efficiencies and provide real-time information on matters affecting high-cost, high-risk department programs in critical crisis, conflict, and post-conflict areas, such as Iraq, Afghanistan, Pakistan, Lebanon, as well as other countries throughout the region.

Over the past 18 months, our Middle East regional office, MERO, has completed several performance audits in the region, including reviews of the worldwide personal security contractors in Iraq and Afghanistan, the department's counternarcotics programs in Afghanistan, and the Baghdad embassy security force.

We also conducted a joint audit of Afghan national police training with the Department of Defense inspector general.

We have found two major issues related to contingency contracting. First, any program needs a well-written contract with clearly defined goals, a suitable scope of work, and measurable performance indicators. OIG discovered contracts that did not meet these criteria, including contracts for Afghan national police training and counternarcotics programs.

Second, throughout our reviews, we found an insufficient number of U.S. government contracting personnel in the field, which led to weak oversight and management of programs.

Mr. Chairman, the key to effective oversight in contingency operations is prevention. Thus, OIG plans early oversight of the department's current and future efforts in Afghanistan and elsewhere before, during, and after implementation.

Moving forward, MERO plans to follow up review of the Afghan national police training, a review of the department's capability to assume management and oversight of the Iraqi police-training contract from DoD, and reviews of embassy construction, the Worldwide Personal Services Protective Services [WPPS] program, transition-related activities in Iraq, and the anticorruption program in Afghanistan.

In our audit of the design and construction of the new embassy compound in Baghdad, Iraq, which was issued last October, our team found the department did not require the construction contractor to provide adequate documentation to support invoice payments for five contracts totaling \$467 million.

In our audit accounting for government-owned personal property held by selected contractors in Afghanistan, the audit team found that the department provided no guidelines and procedures for contracting officers and contracting officer representatives with oversight responsibilities for contractor-held property.

In our inspection of Embassy Kabul, Afghanistan, issued in February 2010, we found that the embassy's oversight of contracts and grants is seriously inhibited by the dangerous security conditions and by the shortage of qualified contracting officer representatives in Kabul. Concurrently, our joint audit of Afghan national police training also highlighted this deficiency.

For your consideration, OIG has provided summaries of closed and open recommendations on contracts executed in Iraq and Afghanistan and in department organizations.

Mr. Chairman, the new Federal Acquisition Regulation on contractor self-disclosure, approved in December 2008, is a positive trend. Since November 2009, OIG has received three disclosures from contractors pursuant to the new requirements.

One trend we believe can be problematic is the continued use of personal services contractors acting as contractor officer representatives and in-country contractor officer representatives. This practice creates significant challenges as it relates to potential criminal prosecutions. We are working with the Department of Justice on that issue.

Mr. Chairman, Congress has provided significant levels of supplemental funds for our efforts in Iraq and Afghanistan. These funds often are enacted as one-year or 18-month money. While supplemental funds have been vital for the success of the U.S. mission for inspectors general, this type of funding often arrives late, and we then operate with the uncertainty of next year's supplemental appropriation.

This type of funding significantly constrains our recruiting efforts and is less helpful for conducting performance audits of construction programs, for example, that necessarily take place one to two years after the funds expire. On the positive side, OIG has received increased base funding to meet planned needs.

We are now seeking a new range of new hiring authority that will permit us to effectively manage our new base funding and enable us to better compete for scarce talent.

I'd like to suggest four areas of improvement for your consideration. First, encourage Congress to set aside funds for inspector general oversight as no-year or multiyear funds.

Second, encourage Congress to provide flexible hiring authorities for any agency IG with temporary offices overseas in contingency environments.

Third, encourage Congress to set aside a percentage of appropriated funds provided to agencies for IG oversight.

Fourth, support any effort to improve government-wide standards that more clearly define whether or not functions are inherently governmental.

In closing, you asked whether a contingency inspector general should be established. While that concept may be attractive at first glance, creation of another special IG would result in overlapping oversight and a new bureaucracy. From our perspective, I'm confident that we have the resources, organizational structure, and staff to respond to these conflicts.

With the right hiring authorities and resources, we can meet any future contingency.

Thank you for inviting me to appear here today, and I'm happy to answer any questions.

SHAYS:

Thank you, Mr. Geisel. I think you probably would find that your four recommendations are perceived as pretty logical on our part.

Ms. Ugone?

UGONE:

Thank you. Chairman Shays, distinguished members of the commission, thank you for the opportunity to appear on behalf of the inspector general of the Department of Defense to discuss the overall system for curbing contract fraud, waste, and abuse.

Specifically, I will highlight a few key deficiencies in contingency contracting and discuss related ongoing actions to help prevent waste, fraud, and abuse.

Since the early 1990s, we have identified contract management as a major challenge for the department to overcome, and the Government Accountability Office has continued to identify this area as high risk.

The need for expediency in contingency operations, such as in Iraq and Afghanistan, can further increase risks. This month, we issued our report "Contingency Contracting: A Framework for Reform." The intent of the report was to provide a useful tool for commanders and contract managers in their efforts to improve contingency contracting practices.

One of the most important areas in contingency contracting is requirements definition, because the pace of operations should compel us to get it right in the beginning. In particular, user requirements need to be appropriately translated into contract performance expectations and measures.

For example, a task order for tactical-vehicle field maintenance services did not contain requirements for the contractor to provide periodic utilization and supporting documentation, utilization reports, and supporting documentation to the Army for review. Had such data been

reviewed, it would show that less than 10 percent of those services were used, which is significantly less than the 85 percent required by Army regulations.

The department has taken steps to reduce contractor personnel and increase utilization rates for these services. In February 2010, we and our colleagues at the Department of State Inspector General Office jointly reported that two task orders, valued at about \$1 billion, did not meet defense needs in developing the Afghan national police because the contract did not allow for rapid changes to the requirements as the security situation in Afghanistan changed.

Another important area is adequate administration of the contract. Fundamental steps include having a quality-assurance plan and assigning qualified contracting officer representatives.

For example, a special operations-forces support-activity contracting officer did not assign a contracting officer representative to 44 service task orders valued at \$514 million. Only after a test caused damage to a C-130 aircraft did command officials discover that the contractor improperly installed a part that later cost \$219,000 to fix. Officials stated that they were addressing this matter command-wide.

Sufficient controls over the payment process to ensure that payments are proper is another important area in contingency contracting. For example, Marine Corps officials did not properly authorize over 9,500 payments totaling about \$310 million. We found that Marine Corps officials made 32 duplicate payments totaling \$2.5 million. One vendor was paid over \$200,000 when the Marine Corps paid the same invoice three times.

We referred the duplicate payments to the Defense Criminal Investigative Service. As a result of our report recommendation, the Marine Corps has created standardized processes designed to prevent or discover unauthorized, fraudulent, or otherwise unusual transactions, and is working to develop a system function to identify potential duplicate payments.

The urgency and pace of contingency operations can increase risks and also challenge us in ensuring accountability. The federal oversight community has been identifying and reporting on fraud, waste, and abuse in Iraq and Afghanistan since the inception of contingency operations. While we do not know the magnitude of occurrences in F.Y. 2009, the Office of the Inspector General, Department of Defense, helped to recover about \$2 billion due to fraud-related crimes worldwide.

The effectiveness of contractor support to expand U.S. operations in Afghanistan and other contingency operations can be improved by applying lessons learned from contingency contracts already executed.

Among the steps that can be taken to improve contingency contracting are: define what is needed and how it can be measured; have both program and contracting personnel involved in

implementing a well-documented oversight plan; and have required documentary evidence, such as a receipt of goods and services, to support that payments were proper.

In closing, I would like to add that the top priority of the Office of the Inspector General, Department of Defense, is to provide effective and meaningful oversight in Southwest Asia in order to identify and deter waste, fraud, and abuse.

We will continue to coordinate and integrate our efforts within the oversight community, and I look forward to answering any questions you may have. Thank you.

SHAYS:

Thank you, Ms. Ugone. We're going to try to keep close to the eight minutes, particularly since we have three panelists, rather than four.

So we'll start with you, Mr. Ervin?

ERVIN:

Thank you, Mr. Chairman.

I want to thank each of you for being here. And I found each of your statements to be enormously comprehensive and helpful and constructive, and so I wanted to preface my questions with that statement.

First to you, Mr. Gambatesa. There were a number of statements in your statement that I found particularly striking and discouraging, actually, and it has nothing to do with you. You're doing your work, but your findings I thought were discouraging.

You say that the number of reports of contract and program-management deficiencies have increased steadily over time. And likewise, you say on page six that, while you didn't observe any serious sustainability issues in USAID's work in Iraq and Afghanistan until fiscal year 2005, but since that time you've noticed sustainability issues again and again. To me, both those things are counterintuitive.

I would understand and do understand at the inception of these conflicts there would be problems with program management, with contract management, with sustainability, but it's striking to me that the problems have actually worsened over time rather than gotten better.

Can you account for that?

GAMBATESA:

Well, the audits pretty much always come up with the same issue, that lack of training, lack of contracting officers, and COTRs, or contracting officer's technical representatives, who have the appropriate training to follow up on these contracts.

The other issue, I think, is the continuity of operations, as you well know that personnel assigned to Iraq and Afghanistan serve one-year terms or one-year assignments there for the most part, and I think that creates a lot of lack of continuity going forward, from one organization, one contracting officer to another. So it's passed along.

And I think that that has a lot to do with it. And in Afghanistan, I can say that the heightening security situation there certainly contributes to lack of proper oversight. The personnel have a difficult time getting out there to see what they need to see, to basically see if the contractors or the grantees are doing what they're supposed to do.

ERVIN:

You also pointed out that, on page eight of your testimony, that all too often USAID has relied on contracting instruments where the risk is borne by the government rather than the contractor, the tendency on USAID's part to use cost-reimbursable contracts, for example.

One doesn't have to be an inspector general, you don't have to be a contracting expert it seems to me, just a normal, commonsensical person to figure out that that's an inappropriate contract vehicle. Can you talk about the mindset that leads people at USAID, in particular—and I can ask your colleagues as to their agencies to comment on that? It's just really indefensible, it seems to me.

GAMBATESA:

Well, I can't speak to the mindset, but I think as an observer I can say that using this type of contract is usually more expedient. It's quicker. You go to people who you know can do the work, and you use these vehicles.

I know that in Iraq, back in the 2003 period, when the agency, USAID, began their oversight there—I'm sorry, their funding, their programs, they had about 13 contracts that were sole-source or less than full competition. We actually audited all of those at the time and found that there were no deficiencies in those.

So I think the reason is that it's expedience. You can get it done more quickly. But as to the mindset of the agency, I don't want to speak for them, but that would be my opinion.

ERVIN:

Final question for you. We had a little colloquy before the hearing began, and we talked about the new administrator who seems to me to be very impressive, and I understand from you that you've had interaction with him and that you're going to do that on a regular basis, I think you said.

You know, this whole issue of the unwillingness to date, not his tenure, but to date of AID using suspension and debarment, do you have any sense whether, based on these interactions that you've had with him, new management, new agency leadership, whether we are likely to see a greater willingness on AID's part to use those rather admittedly draconian measures when the circumstances would argue for that?

GAMBATESA:

I think you probably know that the House Oversight Committee on Government Reform held a hearing in March on this very issue, and I testified before that committee, along with the inspector general from the Department of Transportation and the Department of Homeland Security.

And at the hearing, representing USAID was one of their management personnel. And they basically told the committee that they would, in fact, answer all the recommendations that we had in our audit report and move forward.

Now, I haven't really discussed that specifically with the administrator, the new administrator, but I know for a fact in my meetings with him is he's very interested in outcomes of U.S. dollars being spent anywhere in the world.

ERVIN:

Thank you.

Mr. Geisel, as the chairman noted, right after you made your oral statement, each of the recommendations that you make at the conclusion of your testimony likewise is very, very commonsensical. Can you just give us a little sense of the likelihood of Congress's moving forward on the recommendations you made? Setting aside funds for oversight as no-year money,

hiring flexibility—are you likely to get that based on the discussions you've had with the applicable members of Congress?

GEISEL:

Oh, I think the odds would improve if you supported our attempts.

(LAUGHTER)

ERVIN:

Done. Do you have anything further to add to that?

GEISEL:

No. But I have to take note of the question that you asked my colleague about why contracts are badly written. And I have a philosophy. Or I don't have a philosophy, but I have an observation which holds true to form for, I think, most bureaucracies, and that is that the urgent too often takes precedent over the important.

So you see that agencies are more anxious to get boots on the ground and to get something going than to craft the kind of contract that can be properly enforced.

ERVIN:

Ms. Ugone, what would you say about that? You know, we always hear “appropriately” in the DoD context about the priority that is attached to the needs of the warfighter. And we understand that. And we certainly support that.

But it seems to me that the need to support the warfighter can be reconciled with being good stewards of taxpayer funds. Can you talk about what can be done to encourage a culture within DoD that values the kind of program-contract oversight here that we're talking about?

UGONE:

Yes. I think the first thing is, the contingency contracting issue is not just a contracting officer issue or contracting manager issue. It is a program-official user requirement issue. It is an issue for the financial managers, because if you look at the chart that's displayed over there, the key parts of the process involve those key users.

You've got requirements that start the planning. You've got award. You've got contract monitoring. You've got acceptance. And you've got payment. The people that are involved, it's just not a contracting-officer issue.

And, second, I'd like to say that we recognized early on when we did an audit of the MRAP [Mine Resistant Ambush Protected vehicle], we recognized the acceleration effort on behalf of the Marine Corps, but that's a lesson learned. We ought to take those lessons learned and especially focus with respect to Afghanistan, where urgency is there, but also the lesson learned is there, as well, on how to craft better requirements.

ERVIN:

Thank you very much.

HENKE:

Would the gentleman yield for one minute? I have a follow-up question for Mr. Geisel.

Sir, your recommendations: in your testimony, you make four different recommendations. The second one is on flexible hiring authorities. Are the authorities that you need contained in the authorization bill that the Senate Foreign Relations Committee marked up a month or so ago?

GEISEL:

Not to my knowledge, sir.

HENKE:

OK. Are they in the House version of the . . .

GEISEL:

I've been corrected by my staff. They are in the Senate authorization bill.

HENKE:

Good to know. OK. Are they in the House authorization?

GEISEL:

No.

HENKE:

OK. Just briefly, in 30 seconds, what would the authorities do?

GEISEL:

Well, they would start out by giving us a limited authority to use 3161s temporarily overseas. They would give us the authority to waive the restrictions on re-employed annuitants, that is, how long they can work before they hit their ceiling.

HENKE:

OK. Any others?

GEISEL:

And it would give us the authority, which other elements of the Department of State have, but which OIG does not have, it would give us the authority to write personal services contracts for our employees, for people overseas, where needed.

HENKE:

I understand. And on those PSCs, personal services contractors, in your testimony, you're critical of them in some kinds of roles.

GEISEL:

Absolutely.

HENKE:

And we'll talk about that more later, but I'm glad you're tracking that legislation to enactment.

My second question, if I might, you make a recommendation to have a percentage of appropriated funds go to the IG. So you'd just be a fixed percentage of the agency's budget, more or less. What percentage of the agency's budget are you now, Mr. Geisel?

GEISEL:

Oh, it's too minuscule to even consider. Let's say much less than one percent.

HENKE:

OK. So it's calculable?

GEISEL:

Yes.

HENKE:

What should it be?

GEISEL:

Well, I don't think it should—the issue isn't even the total agency's funds. I would rather say that it would be when the new program, in addition to where our base, I say where the department has a new program that is going to cost a lot of money, and that's going to involve a lot of oversight, that's where we need a new percentage. Now, I believe for the . . .

SHAYS:

Let me do this. Let me have you go in greater depth with him when his time comes.

GEISEL:

OK.

SHAYS:

Because . . .

HENKE:

I was just trying to see if the witness had really thought through his recommendations.

GEISEL:

Oh, yes, because there's a good precedent for it. And it's the Recovery Act, which did give a percentage to IGs.

SHAYS:

Mr. Grant has been overseas for a week, and I don't know if he has the patience here. I mean, Mr. Green. Grant. Oh, you're next. Mr. Zakheim?

HENKE:

We know he doesn't have patience.

ZAKHEIM:

I don't have the patience, either, but thank you.

Ms. Ugone, in the previous panel, we talked quite a bit about CERP, with which I'm familiar from my days in the department. In Afghanistan now, it's not just run by the Combined Security Transition Command, CSTC-A, but it's also now a NATO training mission.

I'm deeply concerned about non-Americans managing American cash. What are your thoughts about this? And how do we ensure that we protect—I mean, the cash business, as everybody knows, is so prone to all kinds of games being played. We know that that has gone on with CERP funds. CERP funds are huge now.

How do we deal with the fact that NATO people might be managing this? Should Congress legislate it should only be Americans who manage it?

UGONE:

Well, there are a few things I'd like to say to that. The Commander's Emergency Response Program is an area in which we had looked at previously in Iraq. And there were challenges with the coalition forces overseeing those funds.

With respect to Afghanistan, we have an ongoing audit on the CERP program, and we don't know as of yet whether or not NATO is overseeing some CERP funds. We are taking a look at that.

The other thing that we've been told by Army officials is that 90 percent of the CERP funds in Afghanistan are now EFT [electronic funds transfer]. So I think there's been a recognition about the vulnerabilities related to cash.

I do know the FMR, the Financial Management Regulation, has been updated to handle issues related to CERP, and I believe there is a section in there if it relates to non-U.S. countries.

But as of yet, it is problematic, because you have to have an established understanding, a memorandum of agreement with coalition partners or NATO. And, plus, if it's NATO, then does NATO standards kick in? I mean, those are the kinds of questions.

So I don't have a full answer for you, because we haven't finished the audit yet, but we'll find that out. But we did find out during the Iraq CERP there were coalition partners.

ZAKHEIM:

Would it make sense, given that 90 percent of the funds are now transferred electronically, for Congress itself to specify that non-Americans should only deal with CERP funds if they're transferred electronically?

UGONE:

That non-Americans?

ZAKHEIM:

In other words, NATO allies or whatever, if they're going to handle CERP funds, they would not handle the cash. They would just manage the electronic funds transfer. Wouldn't that get us out from under this problem?

UGONE:

It might, but you still need oversight requirements related to the EFTs, as well. I mean, you have to make sure that the . . .

ZAKHEIM:

But it's a lot easier to track malfeasance, isn't it?

UGONE:

Right. I think the problem with the CERP piece is going to be more in CERP that's being used in outposts, where you actually have to oversee whether or not you're getting what you're paying for. And the further you get from a secured location I think it's going to be more problematic in the CERP area than before.

ZAKHEIM:

Thank you.

Mr. Gambatesa, you've written quite clearly about the problems of having folks on the ground in Afghanistan and in the theater generally. How are AID activities managed in Afghanistan right now? Is it managed in Kabul or is it managed elsewhere?

GAMBATESA:

It's managed in Kabul, as far as I know.

ZAKHEIM:

And how many people do you have in Kabul?

GAMBATESA:

You're talking about . . .

ZAKHEIM:

AID.

GAMBATESA:

You're talking about AID or . . .

ZAKHEIM:

I'm talking about AID activities.

GAMBATESA:

How many do they have in Kabul?

ZAKHEIM:

Yes, how many—well, however you want to put it. Where does AID manage its activities in Afghanistan from? Is it from Kabul? I've heard it was from Manila. I'd be curious, because we heard in the previous panel that being there is 90 percent of . . .

GAMBATESA:

You're referring to the inspector general's office?

ZAKHEIM:

No. I'm talking about the agency.

GAMBATESA:

Because we were managing our . . .

ZAKHEIM:

I understand that, but the agency, which you inspect . . .

GAMBATESA:

No. No, the agency has an office, has a full office . . .

ZAKHEIM:

In Kabul.

GAMBATESA:

In Kabul.

ZAKHEIM:

OK. And how many people are on the ground there are dealing with contracts?

GAMBATESA:

I don't have that number.

ZAKHEIM:

You don't know?

GAMBATESA:

The agency?

ZAKHEIM:

The agency, yes.

GAMBATESA:

I don't have that number.

ZAKHEIM:

And what's the value of agency contracts in Afghanistan now?

GAMBATESA:

About \$7 billion.

ZAKHEIM:

Seven billion. So you would have thought there would be a significant number of people on the ground there, correct?

GAMBATESA:

Well, they do. I may have that number. Do I have that number here?

ZAKHEIM:

OK.

GAMBATESA:

I can get it for you.

ZAKHEIM:

I'd like that for the record.

GAMBATESA:

Yes, I can get it for you.

ZAKHEIM:

Your testimony says that there's training that has now been undertaken, I think it began in November, to get people up to speed on managing contracts. Interesting that it took from October of '01 to November of '09, but at least AID finally got there.

But that was just a program that was going to be started. So what's happened in the last six months? Are you aware of anything that's happened? Or have they just decided they'll do it, but now they're getting around to thinking about how they'll do the training?

GAMBATESA:

The question is . . .

ZAKHEIM:

Yes.

GAMBATESA:

What happens . . .

ZAKHEIM:

You state in your testimony that in November of '09, AID undertook to train, basically, to train people to manage, to improve their management and oversight of contracts. And I'm just asking, since it's now May of '10, what has happened in the last six months, anything?

GAMBATESA:

I think we see the trend is up; we're seeing problems still in contract management.

ZAKHEIM:

I understand that. So how many people have been trained in the last six months?

GAMBATESA:

I don't have that number.

ZAKHEIM:

OK.

GAMBATESA:

I can get it for you.

ZAKHEIM:

OK. I'd appreciate that, as well.

And, finally, I'd like to ask each of you, I'm deeply concerned about how we can hold foreign subcontractors accountable. And it seems to me the best way to do it is to hold the primes accountable.

I was told in the last panel, well, you know, the primes are too big to fail, which is, in my view, a very unfortunate phrase, given what's happened to our economy when we adopted that approach.

Why should we not hold primes accountable for any malfeasance by foreign subs given how difficult it is with foreign cultures and foreign governments to actually prosecute those subs? I'd like to hear an answer from each of the three of you.

Mr. Gambatesa, why don't you go first?

GAMBATESA:

I think I can go back and answer your last question, because I do have it here.

ZAKHEIM:

Oh, good. Then you'll answer my current question.

GAMBATESA:

OK. USAID has 143 personnel in Iraq, of which 100 are foreign-service nationals and third-country nationals.

ZAKHEIM:

But how many are managing—how many are dealing with contracting, is really my concern, contractors?

GAMBATESA:

I don't know.

ZAKHEIM:

Yes, I know they have personnel, but I want to . . .

GAMBATESA:

Well, they have 13 COTRs right now.

ZAKHEIM:

Yes.

GAMBATESA:

In Afghanistan, they have 105 COTRs and 206 direct-hire personnel.

ZAKHEIM:

OK. OK.

GAMBATESA:

I knew I had it here. I couldn't find it.

ZAKHEIM:

Good. And now as to my current question . . .

GAMBATESA:

And could you repeat it? I'm sorry.

ZAKHEIM:

Sure. What do you think about holding prime contractors responsible for subcontractor malfeasance, given that foreign subcontractors are very difficult to oversee? You mentioned it's hard to get out there. The governments don't always cooperate. The cultures aren't exactly the same.

Why not hold the primes, who, after all, contract with these subs, accountable and, if the subs, you know, are guilty of malfeasance, we disbar or suspend the primes?

GAMBATESA:

Well, the primes are accountable for their subs.

ZAKHEIM:

Well, have we ever suspended or disbarred a prime because a sub was crooked, criminal, went to jail, was caught, whatever?

GAMBATESA:

I don't know that. But they are . . .

ZAKHEIM:

Well, then what does accountable mean if you don't do anything to them?

GAMBATESA:

I'm not saying we haven't. They may have.

ZAKHEIM:

Mr. Geisel?

GEISEL:

I happen to agree with you, 100 percent. It's very, very difficult in countries, especially where corruption is endemic, to hold subcontractors accountable. So I agree with you. It would be best if primes could be held accountable, and as for your remarks on suspension and debarment, I totally agree.

And as a matter of fact, we are going to do a worldwide audit for the department to see how much the department has used these tools. And I fear the answer is not enough.

ZAKHEIM:

Thank you.

SHAYS:

Thank you.

Mr. Green?

Oh, I'm sorry.

UGONE:

Just in response to your question, I believe there's been a recent change to the FAR [Federal Acquisition Regulation] that hopefully will close some of the loopholes related to contractor fraud. It does require the prime—if they have credible evidence of whether or not their subcontractor is making false statements or false acts—to be able to disclose that information.

Separately, suspension and debarments: we have started an audit in the last couple months on suspension and debarments in DoD, looking at the services mainly and Defense Logistics Agency, because we want to have a better understanding of the recommendations made for suspension and debarments and how many have actually been suspended and debarred.

ZAKHEIM:

Thank you.

SHAYS:

Thank you.

Mr. Green?

GREEN:

Thank you, Mr. Chairman. The chairman mentioned in our discourse with the first panel today, this report, "Contingency Contracting: A Framework for Reform." And, Ms. Ugone, you also referenced it in your opening statement. Have USAID and State seen this report?

GAMBATESA:

We just got it today. I haven't seen it.

GREEN:

OK. Speaking for myself, I would commend it to you. It raises a number of what I think are the serious systemic problems related to contracting deficiencies, many of which have led to fraud and waste and abuse and so forth. It's clear, it's concise, and it provides a roadmap to reform which folks like me can understand.

So, again, I would commend it to you. And I would plagiarize from it as much as you see fit.

Now, for State and USAID, based on all of your audits, investigations, and other activities in-theater, if you could recommend to your department or agency three things, just three, that would minimize fraud and abuse and waste, if you will, what would they be and how would you do it?

And I want systemic problems. I don't want stuff in the weeds.

GIAMBATESA:

Well, as I mentioned earlier, training of employees -- certainly would be important to have the properly trained employees. I think if there was a way to continue or extend . . .

GREEN:

That's one, training.

GIAMBATESA:

Yes, training.

Obviously, if there was a way to extend the assignments to provide better continuity from one group to the next. So there's certainly a lack of continuity. So if they could improve the continuity of employees there.

GREEN:

How would you do that?

GAMBATESA:

One way to do it would be to extend the assignments. Now it's one-year assignments. I think if it were a two-year assignment it would probably be better than a one-year assignment. You wouldn't have a . . .

GREEN:

Makes sense.

GAMBATESA:

And . . .

GREEN:

That's two.

GAMBATESA: Third, what would I do third?

GREEN:

I think the folks at USAID are going to be happy to hear you say extend tours.

(LAUGHTER)

GAMBATESA:

I don't think they'll be happy about that at all.

I think the agency really needs to improve its monitoring evaluation which they are working on right now. And they're actually putting together a group to do monitoring and evaluation.

A lot of the monitoring and evaluation now is done by third-party contractors or second-party contractors, who actually go out in. I know of Iraq, for example, specifically, USAID contracts with other organizations to get out and evaluate the performance of contractors, other contractors, because they can't get out themselves.

GREEN:

Contractors looking at contractors.

GAMBATESA:

Well, and that's unfortunately what you have there, because of the situation.

GREEN:

Yes. Harry?

GEISEL:

Well, first of all, I'd say write better contracts. Secondly, and when I say "better contracts," contracts that have measurable indicators of performance—especially on output.

Secondly, I would say more contracting officers and contracting officer representatives and in-country contracting officer representatives on the ground.

GREEN:

How do you do that?

GEISEL:

Well, you persuade the agency to do it. And I see that I believe it was last week, State committed to having 22 on the ground ICORs, as they're called—in-country contracting officer representatives, which was up from the five that we recently saw. So maybe we're having an effect.

And then, third, I'll just have to steal what my colleague said and that is, above all else is training, better training. There's inadequate training.

And with that, I would say we found that many of these contracting officer representatives had other duties as assigned, as my colleagues in DoD like to call it. That isn't good enough.

They need to be spending a whole lot more time on what we brought them over for, which is supervision of contracts, performance of contracts.

GREEN:

OK. Thank you.

Ms. Ugone, I'm going to let you off the hook, since you did such a great report here. I don't know if you did it or you just signed it, but whoever did it . . .

(LAUGHTER)

UGONE:

If I could say, all of us did it, the staff and I.

GREEN:

Yes. Well I think, for somebody like me, it's a breath of fresh air.

SHAYS:

And it wasn't a contractor that did it.

GREEN:

It wasn't a contractor . . .

(LAUGHTER)

Mr. Gambatesa, you noted last year that you would audit in Iraq to determine whether USAID had managed its contracts and grant agreements to ensure adequate oversight had been extended over private security contractors employed by your contractors and grantees. Has that been completed? And, if so, what were the findings?

GAMBATESA:

The Iraq . . .

GREEN:

In Iraq?

GAMBATESA:

Yes, it has been . . .

GREEN:

Findings?

GAMBATESA:

And we found significant deficiencies in the agency's oversight of the contractors.

Now, what the issue there was that some of the reporting on incidents—one of the issues, incident reporting was lacking. And there was really no standard.

GREEN:

Now, that's the contractors. I'm talking about USAID oversight of those contractors. I can tell you they don't do it, do they?

GAMBATESA:

Well, the security contractors were subs of primes.

GREEN:

They were what?

GAMBATESA:

They were sub contractors of the prime contractors. So they weren't directly overseen by . . .

GREEN:

And your prime contractors were your clients. OK?

Why doesn't AID oversee and monitor those contracts? Because they're subs?

GAMBATESA:

Well, they certainly have the responsibility . . .

GREEN:

No, they do. I agree with you. But they don't do it, because they claim those are subs to our clients.

GAMBATESA:

Well, I don't think . . .

GREEN:

Now, let me just take it the next step.

GAMBATESA:

I don't think that's exactly true, though.

GREEN:

That is true. I just was there. I talked to your people. They do not oversee PSC [private security contractors] contractors. And the reason is because those are subs.

Now let me ask you a more important question: If you have an incident and, God forbid, somebody kills a half-a-dozen AID contractors or grantees and the fault is because [of] some malfunction with a PSC, who do you think folks are going to look at?

Are they going to look at that NGO [nongovernmental organization] who didn't oversee and supervise their contractor? Or are they going to look at USAID?

GAMBATESA:

They're going to look at USAID.

GREEN:

Exactly. Don't you think it makes sense for you, for USAID, to monitor those contracts and oversee them?

GAMBATESA:

Yes.

GREEN:

Well, they don't.

OK. My time's up.

SHAYS:

Thank you, Mr. Green.

Mr. Tiefer?

TIEFER:

Let me start with the State Department IG. You know this commission was created in some part after Nisour Square to look into it.

I'm going to take three topics relating to the aftermath of Nisour Square, and ask if you would consider, just consider, looking into any of these three, assuming the Department of Justice gave its OK.

Number one, do State Department investigators have enough guidelines whether State Department inquiries may, in fact, grant immunity to witnesses? We all know how vital this question is, because it's the basis of five or six prosecutions getting tossed by the district court, Nisour Square prosecutions.

Number two, during 2008 the Kennedy report said to look at—and the State Department, we're told, did look at, although I haven't seen any documentation on this yet, did look at terminating Blackwater's very large contract with the State Department and replacing Blackwater, as was done belatedly in 2009.

Did the State Department properly consider the extremely negative effect of not doing so, not terminating the contract, the effect on the delay for a whole year of the SOFA [Status of Forces Agreement], a vital, vital agreement with the Iraqis?

And, number three, you know we've seen some documentation of negative past performance about, quote, "Blackwater's management's lack of communication and handling of two separate incidents," unquote, relating, perhaps to Nisour Square.

Could that have been done sooner than it was finally put out, which was June 2008, almost three-quarters of a year after the incident?

GEISEL:

You're asking an easy question, or three easy questions. And the answer is yes, we are considering these issues.

I'm especially concerned with the first issue. We'll have to work with DOJ, obviously, because the termination is under appeal; or I shouldn't say the termination, the . . .

TIEFER:

. . . dismissal of the case. . .

GEISEL:

. . dismissal is under appeal.

But, yes, absolutely, we are raring to go.

TIEFER:

OK. Let me ask perhaps an easier question. As we asked the first panel, there's authority for the inspectors general in the Recovery Act, for that money. These authorities are not for contingency money.

And the first panel was unanimous on this one, and that was about inspectors general getting the authority to get records and questioning of prime contractors and records of subcontractors.

What do you think about that? Would you think that would be positive to give to agencies like you that look into inspectors general like you?

GEISEL:

Absolutely. I'd love to have it.

TIEFER:

OK.

For AID IG, you published what I would consider a seminal report about suspension and debarment. Really, really, no one else has published anything this good.

Now, I want to mention something that I was questioning about from looking at the report. Statutorily, suspension and debarment are now mandatory, sort of the minimum that all agencies are supposed to do for the very, very high level of actual criminal indictments and convictions, which you label "level 1."

You label "level 2," which doesn't come within that mandatory, but is discretionary, that agencies could impose this for something very serious, like willful bad performance, but not at level 1.

And some of my colleagues have correctly gotten at the fact that nobody's reaching for the authority—no one but you, apparently, or maybe a couple of others, but not the main ones, aren't looking for such a . . .

Do you favor going to level 2 and more frequent suspensions and debarments?

And we also have a particular interest in pressing prime contractors to certify about the responsibility of subcontractors in this area, which you included in your report.

Would you favor agencies doing this?

GAMBATESA:

Would I favor agencies using more than just the first criteria? Of course. And it was in our report that I think we listed four or five criteria.

TIEFER:

You had four levels. No one is going to get up to level four until Mother Teresa is brought into the IGs.

GAMBATESA:

I certainly would favor them using more than just the first criteria of a criminal indictment.

And our audit, as you know, found that the agency wasn't even considering suspension and debarment in some of the cases where we did—well, the only time they did was when we had an indictment.

But there were a number of other instances—where we presented a recommendation for suspension and debarment that was less than a conviction—that they didn't act on.

TIEFER:

And you favor other agencies—it's put forward as a recommendation when you gave your testimony as something in general that ought to be done. Yes?

GAMBATESA:

Yes.

TIEFER:

OK.

Mr. Geisel, let's take that added authority for inspectors general in the Recovery Act, which I think you favored, and the first panel was unanimous on that. Just take such authority. And would it be usable to get documents from prime contractors and the subcontractors, and to get

prime contractors, such as Blackwater and those who are involved in the Afghan National Police?

GEISEL:

I think it would be usable in the case of prime contractors and even subcontractors located in the United States.

Now, all that being said and done, I suspect that prime contractors, especially the larger prime contractors, have got armies of lawyers that might fight our lawyers.

TIEFER:

Well, let me just say that, as a professor of law at the University of Baltimore Law School, I certainly hope there's enough employment out there for lawyers.

For the Department of Defense, Ms. Ugone, let me just set the background for this: You gathered in your very helpful report done for us on 34 contractors—34 reports, that is, in a spreadsheet, even more helpful, that had 380 recommendations in them.

And I just want to thank your staff, who I know beat the clock, working late hours to get that to us. And we appreciate their efforts, and to clear it so we could have it, for use here.

Let me describe the single report that earns the dubious honor for the most recommendations still not followed, six that are still open, not the larger numbers that were somewhat closed and somewhat opened, but the most open ones.

It's about the M2 machine gun, also known as the Browning or 50-caliber. And your recent report on defective and spare parts. And I believe myself that the main contractors here, your report doesn't name them, are the well-known makers of the Browning machine gun, U.S. Ordnance and perhaps, though I'm not definitive on this, General Dynamics.

Your report says that their late parts and their defective parts, quote, "increase the risk for the warfighter" and, quote, "an increased risk was placed on the warfighter."

Do you agree that the Defense Department should have responded promptly and properly to the inspector general recommendations in this regard?

TIEFER:

Oh, and you've got to keep it short. I'm over time.

UGONE:

OK. Mr. Tiefer, they did respond, and we're following up on their actions—absolutely—7,100 nonconforming parts. We had some testing issues, and we had some cannibalization going on to get the right parts.

So we're in the follow-up process with those recommendations, which means that's why it's still open.

TIEFER:

I'm sorry. I'm out of time. Thank you.

SHAYS:

Thank you. Mr. Henke?

HENKE:

Thank you, Mr. Chairman. I've got a couple of topics I want to cover in eight minutes, so I'll try to be brief.

Mr. Gambatesa, your third point in response to Mr. Green's question about three things to do to minimize waste, fraud, and abuse, your third point was, I think, improve monitoring and evaluation.

And then I think I heard you say that AID has, in the field, contractors evaluating performing that function; in other words, evaluating I think you called them delivery contractors.

So you have one contractor watching another. Is that an accurate statement?

GAMBATESA:

Yes, I think that would be a way to put it. But . . .

HENKE:

Is it an accurate statement?

GAMBATESA:

Yes.

HENKE:

So, now, by my understanding of, or your understanding of the current definition of inherently governmental, setting aside the proposed definition from OMB, the current definition of inherently governmental, can contractors evaluate other contractors?

GAMBATESA:

Let me say that the issue there is the inability for U.S. personnel to go out and do this, and I was speaking of Iraq specifically. We . . .

HENKE:

The contractors go out and do it.

GAMBATESA:

Yes. Some of them are local nationals and . . .

HENKE:

Right.

GAMBATESA:

And it's inherently a dangerous job. But in Iraq . . .

HENKE:

Well, inherently dangerous is, of course, different than inherently governmental.

GAMBATESA:

Right.

HENKE:

So one's an ability question, can we get U.S. government people out there, but the "should" question is inherently governmental.

GAMBATESA:

I don't know.

HENKE:

You don't know?

GAMBATESA:

I don't know if that's an inherently governmental function or not.

HENKE:

OK, we talked about inherently governmental at our hearing in February of 2009 with the IGs. So could you take an action to send me a letter on your views of whether contractors watching contractors is or isn't inherently governmental under the current rules and under the proposed rules.

My point is, if . . .

SHAYS:

Would the gentleman yield?

HENKE:

Sure.

SHAYS:

I think that would be helpful from all three of our witnesses.

HENKE:

That would be great, yes.

My point is, you're a senior person. You're all senior people. If we're not clear, then we know it's not clear at the point of execution. So what the question, Mr. Gambatesa? What are you uncertain about?

GAMBATESA:

No, do I think it's a good way to do business? No.

But whether it's inherently governmental or not, I don't know. We can find that out.

HENKE:

Why is it not a good way to business?

GAMBATESA:

Well . . .

(LAUGHTER)

The best way to do it would be to have a U.S. government employee . . .

HENKE:

Right.

GAMBATESA:

. . . someone who works for the government who has a stake in the program to be the one providing oversight. However, in Iraq, because of this whole issue of not branding that USAID or the U.S. government is involved in the oversight or in providing the jobs, it was specific in this program where the agency was hiring people to pick up trash and that sort of thing.

And the contractor who was actually providing the funding to do this then was being overseen. And they'd have other observers go out from other contractors to provide the monitoring and evaluation and then report back to the agency.

Because they didn't want them to know that this was coming from the U.S. government.

HENKE:

Just get us a letter in . . .

GAMBATESA:

Sure.

HENKE:

. . . in, say 15 days, because the chair asked for things within 15 days. We don't want this to be one of those endless things we never hear about again.

GAMBATESA:

No, we'll do that.

HENKE:

Just simply whether contractors overseeing and evaluating contractors is or isn't inherently governmental.

ERVIN:

Can I just jump in just briefly, and I think we probably have the same question, but I'll wait for the letter, but, before the letter, could each of you, Mr. Geisel and Ms. Ugone, just give us your views as to whether, under the current rules, contractors overseeing contractors in this context is inherently governmental.

I would think that would be a short, easy answer.

GEISEL:

The short, easy point I have to make first is that I'm not an attorney, and there are many attorneys who are battling each other. But I can't see how it is inherently governmental.

But, all that being said and done, there are people who get paid to make this determination.

ERVIN:

You can't see how it is or isn't?

GAMBATESA:

Oh, I think it is not—I think it is inherently governmental, yes.

(LAUGHTER)

ERVIN:

OK, OK. You said something different. That's just what we . . .

GAMBATESA:

Right, thank you for correcting me.

SHAYS:

No, no, I want to make sure the record's very clear on this issue. The question is, contractors overseeing contractors—is that not acceptable because you should not have contractors overseeing contractors?

GEISEL:

That's a different question. And I'm glad you asked it. Because there may be times . . .

SHAYS:

I'm sorry then. I'm going to withdraw my question. I would like to make sure the answer to the question asked was done accurately. So state the full sentence . . .

GAMBATESA:

OK.

HENKE:

. . . that Mr. Ervin asked.

GEISEL:

As I understood it, what Commissioner Ervin asked was very simple, and that is, are contractors supervising other contractors? Is that inherently governmental?

And I say . . .

ERVIN:

Under the present FAR.

GEISEL:

Sorry?

ERVIN:

Under the present FAR rule.

GAMBATESA:

Under the present, I would say it can't be done, because that is an inherently governmental job.

HENKE:

OK. And Ms. Ugone?

UGONE:

Yes, it is inherently government, based on—we've identified three instances. And where it is specifically inherently governmental is when contractors are certifying payments for vendors' goods, services or salaries and when they're accepting on behalf of a government.

ERVIN:

Do you want to change your answer . . .

GAMBATESA:

No, but you have prime contractors who are overseeing subcontractors. So you're saying that they can't do that?

Is that the question? I don't understand the questions.

HENKE:

The situation you described wasn't a prime-sub. It was, you have—what do you call them, delivery contractors?

GAMBATESA:

No, they were not overseeing the contractors. They weren't supervising the contractors. They were evaluating the program.

ERVIN:

Right.

GAMBATESA:

That's different than supervising, one contractor supervising another. And so I think Mr. Ervin's question is—and correct me if I'm wrong, sir—should one contractor supervise another? Certainly. We do it all the time. They do it all the time with a prime and a sub.

But your question, I think, was, is this monitoring and oversight inherently governmental?

The overseeing of a program, evaluating a program . . .

HENKE:

The critical evaluation leading to what Ms. Ugone said, which was acceptance of a product or service.

GREEN:

It's not a prime-sub issue. It's a prime-prime issue.

GAMBATESA:

Right. I agree.

HENKE:

I actually didn't have the exact same question. Did I hear correctly, Mr. Gambatesa, when you said that some of these delivery contractors are actually not American; they're foreign contractors?

Is that what you said, that the people who are doing this evaluation might be foreign contractors?

Where do the foreign contractors come in?

You said something about foreign contractors here.

GAMBATESA:

Well, there are foreign contractors. For example, some of the contractors, the sub-security contractors are foreign contractors.

ZAKEHIM:

No, no, no, I know that. But did you not refer to evaluations by foreign contractors of prime contracts?

Are they doing that for the United States government, foreign contractors?

GAMBATESA:

I'm not certain, but the monitoring and evaluation contracts are usually U.S. entities, but they then might hire subs who are foreign nationals to . . .

ZAKHEIM:

Who will do monitoring and evaluation?

GAMBATESA:

To do the monitoring and evaluation?

ZAKHEIM:

So we will in theory, at least—it actually sounds like in practice—in a country like Afghanistan, where everybody from the top down in this country say has corruption issues, we could be hiring Afghan subcontractors to monitor and evaluate contracts?

GAMBATESA:

No, I don't think so in Afghanistan. I know that it was done in Iraq.

ZAKEIM:

It was done in Iraq. And there's no bar to hiring them in Afghanistan?

GAMBATESA:

I'm not certain if it's going on in Afghanistan.

ZAKHEIM:

And do you think that's a good thing if we would do something like that?

GAMBATESA:

No, I don't.

ZAKHEIM:

OK. Should we have something explicitly forbidding that to happen?

GAMBATESA:

Well, we probably could, but . . .

ZAKHEIM:

No, should we?

GAMBATESA:

Well, probably should, yes.

ZAKHEIM:

Do you agree, Mr. Geisel?

GEISEL:

I certainly do.

ZAKHEIM:

And Ms. Ugone?

UGONE:

Specifically what is to be forbidden?

ZAKHEIM:

To forbid foreign contractors or subcontractors from evaluating contracts on behalf of the United States government.

UGONE:

Yes.

SHAYS

Mr. Henke, you have the floor.

HENKE:

Thank you, sir.

I want to shift gears to the issue of contractor performance and performance-recording specifically.

Mr. Gambatesa, your statement about debarment: obviously, the high end of performance evaluation says "USAID did not consistently enter debarred firms into the government-wide system, protracting them. Moreover, we learned that USAID could not." So, number one, didn't enter them into the system, for debarred companies.

And a debarment's a big deal. I mean, it's a big legal deal, right, when you debar a contractor?

So it happened; folks didn't enter it into the EPLS, the excluded party system.

Second, you learned that AID could not establish that it had performed required checks on prospective contractors. So that's someone going out and saying, "Is Vendor A debarred, yes, no?"

My question is actually for Defense and State, on an issue of past performance. You said you're both going to evaluate, I believe, your agencies' use of past performance. GAO's evaluated it and said it's really pretty weak, overall.

What I would ask each of you to do is, for the commission, take a look at two instances and give us some written feedback in about two weeks on what you find.

For State, Mr. Geisel, if you would have your office look at how did State document and evaluate the performance of ArmorGroup, particularly, obviously, as a result of the lewd incidents from last August and September?

I want you to evaluate, has State documented, formally documented in the required way, whether—there's a bunch of different systems out there, PEEPERS or CPS or others—just give us a one- or two-page letter that says what you found: Did State evaluate its performance fairly?

And, Ms. Ugone, I would imagine you're familiar with the Paravant issue, the Paravant company that was a subject of an extended hearing by the Armed Services Committee, a couple contractors shooting Afghan citizens?

UGONE:

I'm not very, I guess, involved in the details of that.

HENKE:

Right. If you would just check, though, see how DoD has evaluated the past performance of Paravant on that task order. It was written by a contracting command in Orlando under a big IDIQ contract to a major Defense contractor and then they subbed it out to Paravant and sent some pretty unqualified yahoos over to Kabul.

So take a look at how DoD evaluated that contractors' performance. The issue is past performance: does anyone take it seriously and do what they're supposed to do?

Thank you.

SHAYS:

Ms. Schinasi, you have the floor.

SCHINASI:

Thank you.

I'm glad to hear you're doing reviews of past performance. And I would encourage you, as you do that, to look across agencies as well. I know you have responsibilities for your own agency, but many of the government contractors manage the government much better than the government manages the contractors because they do have that landscape across all government agencies that government sometimes isn't able to get in its review. So I would encourage you to do that.

Mr. Geisel, I might ask just a couple questions on one of the specific audits that you did on the new embassy compound in Baghdad that was issued, I guess, October 2009. And in this, you made a number of recommendations about recovering funds from First Kuwaiti Trading. My understanding is that you called those recommendations—and I think they totaled about \$120 million, give or take. You've called them resolved pending further action. Does that mean you've gotten the money back? Or does that mean State has agreed to try and get the money back? Or what is the status of those recommendations, I guess, is what I'm after?

GEISEL:

From your mouth to God's ear. As far as I know, State hasn't even made an effort to get the money back. Resolved simply means—from our point of view—that State has not disagreed with our recommendation. But the recommendation is still out there, and we're waiting for State to try to get the money back.

SCHINASI:

You make those recommendations to the contracting officer. And so, one of the things that we are asking as a commission is about authorities and who has authority and who needs more authority. Can the contracting officer really do that? Or, as you say, perhaps needs some kind of support from the leadership or some other way to prioritize his or her activities?

GEISEL:

I think legally it begins with the contracting officer. But clearly, when you're talking about that kind of money from a very, very powerful firm, it's going to need a lot of support, above all, I would think, legally.

SCHINASI:

We will be anxious to hear how that goes along as . . .

GEISEL:

Me, too.

SCHINASI:

. . . as you try to keep pushing this. Well, do you have a way to go back and re-recommend? Or is there something in the process that you have with the State Department leadership to . . .

GEISEL:

Absolutely. We will periodically remind the department that we are waiting for their report on what they have done to enable us to close the recommendation.

SCHINASI:

And you will keep on top of that until . . .

GEISEL:

For that kind of money? You better believe we will.

SCHINASI:

There's another recommendation that you made on First Kuwaiti Trading contracting compliance with the Cargo Preference Act. And what I think is interesting there is the fact that the department has not been able to get a response from First Kuwaiti. Do you have any legal means to compel the company to respond?

GEISEL:

I think you'll have to ask some of the lawyers. I don't know. I would assume that we, well, I won't even assume. I'm sure the answer is yes, it can be tried. Will they succeed? I don't know. But we've certainly urged the department to try.

SCHINASI:

This is following up on the line of questioning that Commissioner Zakheim was about working with foreign companies. I mean, it obviously makes things more complex. And on the first panel, for the investigations, we heard a bit about the challenges that are, you know, inherent in working in a contingency environment.

I guess one of the proposals that's been put forward is to put more in the U.S. government contracts that would require cooperation, both at the prime level and subcontract level. You

know, if you want to come take the money from the U.S. government, then you have to abide by certain rules. So would you support putting additional contract items in that would . . .

GEISEL:

Absolutely, with the realization that this is a complicated issue which is governed to some extent by international law and also by diplomatic relations, as we have seen with First Kuwaiti. It's not easy, but any help that we can have, of course.

SCHINASI:

I would just also note that you also make a recommendation that there should be a past performance evaluation done of First Kuwaiti. So following up on our previous line of questioning . . .

GEISEL:

Well, I think the report speaks for itself. There were innumerable and unacceptable bad practices, substitution of inferior building materials from what was required by the contract, standards that were simply unmet, a whole very serious problem with the fire-suppression systems. And this made the newspapers, and it deserved to make the newspapers.

SCHINASI:

Maybe the press will also help get some of the money back. I don't know. We'll see.

To the point about the flexibilities that you've requested in the State Department authorization, I hope that you are successful in getting those. But let me ask you: when's the last time the State Department had an authorization?

GEISEL:

Why did you ask? Is it eight years ago or 10 years ago?

SCHINASI:

You make my point. And do you have a Plan B?

GEISEL:

Well, we've gone to OPM [Office of Personnel Management] for what they could administratively give us. But there again, the past history has not been good.

SCHINASI:

The past history in that OPM doesn't have the ability to give you administrative . . .

GEISEL:

Well, has not given it to us.

SCHINASI:

Has not given to you?

GEISEL:

Yes.

SCHINASI:

That's interesting. OK.

A question for all of you: Is there any reason not to mention company names and individual names in your audit reports? I'm going to start with you, Ms. Ugone. And Commissioner Tiefer just made reference to one of your audit reports that he assumed who the company was, but you didn't name it.

UGONE:

Part of the reason—and we are looking at that because the question has been asked of us, why don't we mention contractor names. Sometimes it could be because we might have made a referral of that particular contractor. But really, there's no reason not to include a contractor's name. What we have to be careful about is making sure that any proprietary data that's referenced to the contractor is appropriately marked. So there is really no reason not to include

the contractor's name. But we have to take extra steps to make sure any related data is appropriately protected.

SCHINASI:

Mr. Geisel?

GEISEL:

Well, we just discussed an audit where we very much mentioned the name of a contractor. And other than that, I agree with Ms. Ugone. There are times when you simply can't. But in principle, we should when we can and when it's fair. I don't want to take pot shots where really a company might have some legitimate defenses.

SCHINASI:

Mr. Gambatesa?

GAMBATESA:

Yes, we generally do . . .

SCHINASI:

You do? OK.

GAMBATESA:

. . . put the names of the contractors in there. We obviously have our lawyers look at them for proprietary information. But we generally do put the name of the contractor in in an audit.

SCHINASI:

Yes. And I would assume fairness and proprietary data are the two overriding concerns. But as much as a fan I am of more training, it seems to me there are embedded incentives in our systems that no amount of training can deal with. So I'm looking for other ways to realign the incentives so that the government and the companies can both be working toward the same goal.

Mr. Gambatesa, let me ask you a question.

My time is up.

SHAYS:

You have one last question that's short?

SCHINASI:

Yes.

SHAYS:

Let me just say we're just going to open it up, this second round, for whoever would like to do a second round. Some may choose not to. If you want to just pursue a line of questioning— is this a new line?

SCHINASI:

It is a new line.

SHAYS:

Yes, why don't you just wait?

SCHINASI:

And you can answer it briefly or take a little more time, as the chairman has indicated.

Are there specific issues with respect to grants that we have not talked about with respect to contracts, either in the areas of fraud or the different areas, you know, different phases of awarding grants that you would like to raise as areas where you've seen particular concerns in your audits?

GAMBATESA:

Well, I think grants are a little more of a risky operation than contracts. So you have a lot more control over the contracting process than you do in a grant. The grant—basically someone applies for a grant, and they get it. Or they get it or not. But I think the contracting process is obviously a more secure way of doing business than a grant.

SCHINASI:

How do you deploy your resources internally then to look at grants versus contracts? Are they more risky, but also harder to audit against a set of standards than perhaps a contract with a FAR?

GAMBATESA:

Well, we generally will deploy our resources based on the size of the dollar amount we're looking at. And we obviously can't look at, you know, the \$9 billion or \$17 billion all the time. We can't look at the whole amount necessarily. So what we'll do is we'll look at the largest amounts and also the age, or for lack of a better term, where the instrument, the grant or the contract, is within the program.

Obviously, we don't want to go in at the beginning of a program and try to audit it because it's not developed enough to really make a decision as to whether it's being effective or not. So we basically look at the dollar amounts and where the contract or grant is in its fulfillment of the contract or its life cycle.

SCHINASI:

I'm thinking of things, particularly like the change in the FAR recently about self-disclosure and that contractors have to self-disclose.

GAMBATESA:

Right.

SCHINASI:

I mean, that seems to me to be something that we would want the grantees to do as well.

GAMBATESA:

Yes, that'd be great.

SCHINASI:

Yes. OK.

Thank you.

SHAYS:

I was struck by, Mr. Gambatesa and Mr. Geisel, your being emphatic that we don't need special IGs.

I am not sure, Ms. Ugone, what your position was.

UGONE:

Well, I detailed it more in my written testimony. But there are a couple things I want to say.

SHAYS:

No, I want a short answer. Are you supportive or not?

UGONE:

OK. I think I would support it from a mixed standpoint because it's worked. But it's also worked where you have an IG run an interagency level like Hurricane Katrina and like my IG right now is chair of the interagency coordination group for Guam.

SHAYS:

OK. So you're kind of . . .

UGONE:

So it works in both ways.

SHAYS:

. . . in the middle here. I am just struck by the fact that it almost seems like a turf war. And when I in a previous life in Congress I oversaw with my Government Oversight Committee State, DoD, and USAID in one committee, it was wonderful to have that synergy.

And so, you had the special investigators, IGs, who had the ability to cross from one to the other. I also from my standpoint like a competitive model and I want you to respond to this.

I don't like thinking, Ms. Ugone, if your people or, Mr. Geisel, or Mr. Gambatesa, if your people don't think there's really something there, you don't do it. But someone else may catch it. The special IG may, in that instance say, you know what? There's something here and catch it. You've got two looks instead of one.

What I don't like about the system—and I want you to comment—is that there's all these gates that say no and not enough gates that say yes. You could do all this work, and in the end, one, the prosecutors decide we're not going after it when the case is a fraud. So please tell me why the IGs don't make sense, the special IGs don't make sense. What would be the reason?

UGONE:

Well, I think it makes sense for my colleagues here in AID and State. If you take a look at the special IG for Southwest Asia stood up by Mr. Heddell—that is making sense. That's leveraging not only us at the table. It's also leveraging SIGAR, SIGIR. And it's also leveraging the service audit agencies, the inspection agencies. So we do have a model.

What I think is if it's overseas contingency operations, these are the three organizations that are going to be involved in oversight. We're involved in . . .

SHAYS:

But we're not saying that you can't do it. I mean, but you're stove-piped. You can't go to the other side. So please tell me what shouldn't I like about what SIGAR's done or SIGIR's done? And if we took them off the page, would we be as well off as we are in terms of the oversight?

You can work together. I just don't get it. I frankly don't get it.

UGONE:

I don't think there's any . . .

I mean, I'm not objecting to SIGAR or SIGIR. In fact, they do . . .

SHAYS:

I understand.

Mr. Geisel?

GEISEL:

Well, I don't like turf wars, either. And I think there was a real need for SIGIR in Iraq when we first started because we didn't have the resources to go out and do what needed to be done with an overseas presence. The point is now that we do have the resources. We also coordinate very well together.

I don't like turf wars. I also don't like extra bureaucracies. You know, in the U.S. government just to stand up any sort of organization you need personnel lists, you need . . .

SHAYS:

That argues for not having to stand them up, to keep them standing. I mean, I could make an argument . . .

GEISEL:

Well, no. But wait. Let me give you an example, if I might, where I think it worked very well. The gentleman sitting on your left [Commissioner Ervin]—the Department of Homeland Security OIG, could . . .

SHAYS:

Sir, I don't have a lot of time. And I just want to get through.

GEISEL:

Well, the answer is they did a great job with the IG.

SHAYS:

He always does a wonderful job. But you know, the bottom line is you all have come and testified and said we don't need them.

And I don't get it.

GEISEL:

Any longer.

SHAYS:

I don't get it, because—different perspective—they have something you don't have. They get to oversee, look anywhere, not just your stovepipe. And frankly as well, with all due respect, you tend to have a relationship with the department that, you know, is continual. And sometimes there are pressures within a department.

Mr. Gambatesa, you . . .

GAMBATESA:

Well, I don't think the relationship with the department is incestuous in such a way that we wouldn't do our job objectively. We certainly do.

Now, as far as stove-piping goes, I mean, we each have our own authority, as you know, to oversee our organizations. And what we end up doing is spending more time, especially in Afghanistan, in coordinated with SIGAR, spending hours coordinating with them to make sure that they're not doing the same thing we're doing.

SHAYS:

Why do you have to spend hours? Why don't you just ask them?

GAMBATESA:

Well . . .

SHAYS:

I mean, why do you have to . . .

GAMBATESA:

Because they have the same, theoretically, the same authority we do to oversee USAID programs. I don't agree with that.

SHAYS:

Well, I don't think grownups should have a hard time coordinating, but . . .

GAMBATESA:

But when you have . . .

SHAYS:

But you . . .

GAMBATESA:

But when you have two organizations that both think that they are in charge of a certain oversight, then you have to sit down and hammer this out and decide who's going to do what.

SHAYS:

OK. So the argument that I'm hearing is basically it's a coordination issue. And I mean, you're entitled to your opinions, and you may be right, and I may be wrong, but it just struck me that strong in each of your statements was, "We don't need them."

GAMBATESA:

It's duplicative.

SHAYS:

And then I looked at what they have done, and SIGAR admittedly is being set up; later I might have suggested you just roll in SIGIR and have them do the SIGAR as well. I mean, look at Afghanistan. But we have a difference. I just am pointing out that all three of you were pretty

strong about "we don't need it." That's your position. I'm struck by the fact that thank God we had them.

And you know what? We needed them because, frankly, we weren't seeing the work. And with DoD IG, we had a hard time getting them to even go into Iraq. They didn't even want to go there. And we had to put pressure on them to do it.

GREEN:

Mr. Chairman, if I might just interject something? I'm not taking a position one side or another, but I think you'll have to admit getting resources for your three offices has not been a cakewalk. And the one thing that the special IGs get are resources. So, whether there's a conflict or not I don't know. But they get funded far beyond what you will get funded. So it's just an added capability.

SHAYS:

Yes, the bottom line is to me the competition is a good thing and the coordination is a challenge, but that's kind of the way I look at it, and I look at what they've done and said thank God we had them. Thank God we have you. And, frankly, the more the merrier.

On a positive note, Mr. Ugone, this is an excellent report that I appreciate you writing. What I like is you went back to look at the past recommendations. You have your two fold-outs up there. The first one, the key aspects of contracting process, what's in red, my understanding is, is things that just keep coming up, correct?

UGONE:

Yes, those are recurring issues.

SHAYS:

And what struck me is you have under pre-award award and contract administration, it's all red. Why is it all red there? And let me ask the others as well. Do you have this sense that your recommendations continually have to be made?

Mr. Gambatesa, do you find that you're making the same recommendations over and over?

GAMBATESA:

Yes. We do.

SHAYS:

Yes.

Mr. Geisel?

GEISEL:

Yes, we do.

SHAYS:

And Ms. Ugone, obviously.

UGONE:

Yes.

SHAYS:

So why?

UGONE:

Well, there are different pockets of programs, and if I could just illustrate one, the War Reserve Materiel, the Air Force contract, a group from about \$106-and-some million to \$600-and-some million with every possible contract-administration problem there is.

However, we did a follow-on audit, and there's been improvements. They moved to the contracting office. So they took action. But then when we find another program, like CNTPO, the Counter Narco-Terrorism Program Office contract, that also has problems. So where we identify an issue, it's corrected. And then we go to another programmatic area or program area, and we find similar issues.

SHAYS:

Thank you.

UGONE:

So there are pockets.

SHAYS:

Since I'm chairing, I want to make sure I'm following my own rule here, or our rule. My time's up.

Do you, Mr. Ervin?

ERVIN:

Just a couple of quick things, I'll be very brief.

Mr. Gambatesa, I just wanted to go back to this contractor overseeing a contract. I think this is really simple, and I just wanted to make sure you understood what our question was, and then I'll leave it.

I think we all here would agree that it's not only permissible for prime contractors to oversee the work of subcontractors, it's required. And that happens too little. That's part of our problem here in Iraq and Afghanistan.

We weren't asking about that. What we were asking and I was asking was whether under present FAR rules it is permissible, it is inherently governmental for a prime contractor—let's say there's a prime contractor X that's got a contract to provide linguists in Afghanistan—is it inherently governmental under current regulations for contractor Y—no organizational relationship to contractor X, no contractual relationship between X and Y—for a new contractor to be brought in by the government client to oversee the work of contractor X in providing those linguists? Is that inherently governmental under the present rules?

SHAYS:

Could I just say I would prefer inherently governmental means it should be done by the government? That's what we're saying.

ERVIN:

So what's your answer?

GAMBATESA:

Well, you wanted us to get back to you on it, so . . .

ERVIN:

Well, you can give us a letter, if you want, but do you have a few right now as to whether the example I just gave is inherently governmental under the current rules? Contractor Y overseeing contractor X's provision, its effectiveness in providing linguists in Afghanistan, let's say?

GAMBATESA:

I don't think it's proper, but whether it's inherently governmental is another story. It's another issue . . .

ERVIN:

OK.

GAMBATESA:

. . . that we would get back to you on. And I think it's a legal matter, as Mr. Geisel said.

SHAYS:

He was trying to save you the need to write a letter, but you can write the letter.

ERVIN:

All right, Ms. Ugone, just one final question for you. It's a little, well, I was going to say esoteric. I don't really think it's esoteric. I think it's really kind of basic and fundamental.

You talk on page eight of your testimony about instances of duplicate erroneous payments and the fixes that have been undertaken by the various services within DoD to deal with that. Is one of the fixes that's being contemplated, instituted, et cetera, with regard to this problem recovery audits by third-party outside contractors?

UGONE:

I'm not aware of that as the tool.

ERVIN:

Any views about the propriety of that, the efficacy of that?

UGONE:

I'd have to get back with you on that.

ERVIN:

Do you have any notion of what the overall scope of improper payments, duplicate payments, erroneous payments might be?

UGONE:

You know, we are commencing some efforts in the area with the recent OMB initiative on improper payments. And one of the areas that is interesting, an A-123 revision [OMB Circular, Management's Responsibility for Fiscal Control], is that a potential improper payment can be deemed as being potentially improper if it doesn't have supporting documentation.

And so if you take a look at the documentation issue across the board within contingency contracting, you've in essence got potential improper payments under the new definition on A-123. But we're just starting work in that area.

ERVIN:

OK. And then the final question that I'd like to get into very, very briefly is this whole SIGAR, SIGIR, special inspector general for contingencies; the specific proposal, as I understand it, that SIGIR has for consideration is standing up a special inspector general for contingencies generally, kind of an off-the-shelf or on-the-shelf special inspector general that would be available to be deployed the next time there's a contingency.

That's one thing. That is separate from the notion of there being a special inspector general for Iraq, Afghanistan, for a discrete contingency that has actually happened. It seems to me one can distinguish between the two.

With regard to this latter circumstance, it seems to me the record that SIGIR has established and the record that SIGAR is establishing shows the efficacy of that, the cross-jurisdictional ability to look at issues, the laser-like focus to focus just on wartime contracting issues as opposed to the whole panoply of issues that you three have to deal with, and then Mr. Green's point about the, you know, rightly or wrongly, the fact that Congress is more likely to give money to a special inspector general to look at a discrete thing than inspectors general generally.

So distinguish between the two. What's your view about that?

UGONE:

Well, my comments that I made earlier to Chairman Shays is the former, which is this idea of having an on-the-shelf overseas contingency operations IG.

I think the key is this is a lesson we've learned, you know, contracting, contingency contracting, the military is now incorporating that into their operational planning. So that's what we should be doing is that when there's an operational plan going on for overseas contingency operations, we should be part of that plan, which we should be pre-positioned. And I think that's where I was coming from earlier.

ERVIN:

OK.

Mr. Geisel and Mr. Gambatesa, quickly on that?

GEISEL:

Well, I was delighted that Commissioner Green mentioned the matter of resources because, of course, in 2004, SIGIR's budget was as big as the State Department, as big for Iraq as the State OIG's budget was for the whole world.

And I am glad you made that distinction between the guy sitting on the shelf waiting to do anything and the guy who's there to do something specific. And I can understand somebody who's taking care of a specific problem, although, as I suggested earlier, I like the solutions for Katrina better where they kept it; they had a special deputy within an existing OIG, because you don't have to duplicate bureaucracies.

ERVIN:

Thank you.

Mr. Gambatesa?

GAMBATESA:

Well, we actually have been quite successful when USAID has received especially supplemental funding for the Congress to write in funding for us also, so we've been quite successful in that area, so we haven't been lacking either—and, of course, in 2009 it's been normalizing our budget for Iraq and Afghanistan.

I agree with Mr. Geisel that, you know, the two are different instances, one on the shelf that would have nothing to do for 30 years . . .

ERVIN:

Right.

GAMBATESA:

. . . of the 60 years that SIGIR put into their plan.

As far as SIGIR goes, I think Mr. Geisel mentioned that when the Iraq conflict began, not all the IGs, the statutory IGs, were capable or had the capability to work overseas. We, in fact, did. And we were there relatively at the beginning with SIGIR. And I think there was a need for SIGIR at the time.

Now, as far as Afghanistan goes, I think it's a completely different situation. I think that my colleagues here have—I won't speak for their sufficiency, but they do have forward-deployed people that they didn't have before. And I think we collectively could provide the proper oversight in Afghanistan.

So if the Congress, Senator McCaskill, has a proposal to roll SIGAR into SIGIR, my recommendation would be that if the Congress and the administration are dissatisfied with SIGAR, that they disband it and give the funding to the existing IGs to do the work. We're there. We can do the work.

ERVIN:

Thank you.

ZAKHEIM:

I've got . . .

SHAYS:

Yes, go for it.

ZAKHEIM:

Yes, first of all, just a comment. One of the things that keeps coming up from all our inspectors general is you folks seem to manage to get people out into the countryside or wherever you need to check, and yet when it comes to the mainstream departments, we're constantly told, "Oh, the security situation makes it impossible," so they can't manage the contracts.

But somehow you folks—I guess you're Iron Man or something, because you all manage to get out there. And there's a huge disconnect there. And now isn't the time, but I just want to surface that.

I want to ask you something, Mr. Geisel, maybe get comments from your colleagues at the table, your fourth recommendation to support OMB's pending standards regarding what's inherently governmental.

My reading of the OMB draft and what I've heard other analysts say about the OMB draft is that it really is not all that different from where things are today. So while it's all very nice to support it, how much mileage are we going to get out of it? That's number one.

What we'd be left with, the same problems we've got now where an inspector general, with all due respect, has to go back and study up whether something fits into the definition. And that's not your fault, because I think the definition is useless. And if it's useless, then you've got to go back and figure out what to do to answer our question. So it's not your fault at all. So that's number one.

Number two is the whole term "closely associated," which, you know, if it walks like a duck, quacks like a duck, looks like a duck, but in the government may not be a duck, because we don't

define "closely associated" terribly well. I'd like your sense: you know, you want us to support this, great, but what are we really getting out of it, Mr. Geisel?

GEISEL:

Well, you're ahead of me because I haven't seen the draft, and I had hopes for more than what you're saying is coming. And that's my answer to both questions one and two. I only want you to support something that's worthwhile, and naive person that I am, I was going on the assumption that they were going to give us something worthwhile.

ZAKHEIM:

Ms. Ugone? Have you seen the draft?

UGONE:

I have not seen the draft.

ZAKHEIM:

OK.

Mr. Gambatesa, have you?

GAMBATESA:

No, I have not.

ZAKHEIM:

Well, let me ask then, could you get your staffs to find the draft for you? It's not exactly top secret. And I would like within two weeks your comments on that draft. Thank you.

SHAYS:

Mr. Green?

GREEN:

Thank you.

Mr. Gambatesa, you mentioned earlier if you were king two or three things that you would do. Longer tours is one of them. What do you recommend to get more organic assigned AID personnel, including subject-matter experts into the field so that you minimize third-country nationals or local nationals overseeing your contractors and grantees? What do you do? What are the steps you would take within AID to do that?

GAMBATESA:

Well, they're already beginning to try to basically hire more people. The DLI, this development leadership initiative that they're working on, the intent was to hire 1,000 new foreign service officers over a three-year period, and I think they're about a third of the way there or two-thirds of the way there.

But, and again, not speaking for the agency, but I know that they . . .

GREEN:

You're not?

GAMBATESA:

I don't speak for USAID specifically. I don't have all their facts. But from the presentations that I've seen, their argument or complaint has been that years ago, USAID had something like 20,000 employees. And as of a couple of years ago, they only had 2,000, ballpark. Don't hold me to those numbers specifically. And they've been filling in the void with personal services contractors.

So I think that they're on the right path. I think the Congress has provided the funding they needed to increase the staffing at USAID. And really, I think that is the issue. The only way you're going to get away from using PSCs or other contractors is by having more staff on board that are well trained.

GREEN:

Well, increasing the staffing is one thing, but they can also sit here in Washington or they can be deployed. I'm talking about deploying people.

GAMBATESA:

They do have people deployed. Again, I don't have the exact numbers, but I know they're looking for a specific number of employees to have in Afghanistan specifically. I don't know that number exactly, but we can get it for you.

GREEN:

But you still have difficulty getting folks around?

GAMBATESA:

Well, we do too, to some degree. But is it always a security issue? Or is it maybe the reluctance to go out? I don't know that for a fact, but that's been proposed also.

GREEN:

That, in addition to security, that is just a reluctance to get out in the field.

GAMBATESA:

That's what we've heard, yes.

GREEN:

OK. Thank you. That's all I have.

SHAYS

Mr. Tiefer?

TIEFER:

Deputy Department of Defense Inspector General Ugone?

UGONE:

Yes.

TIEFER:

Two reports I want to ask you about that are both in the spread sheet that you gave us, which shed new light on these reports. One is about the U.S. Army Corps of Engineers award fees, which you mentioned in your report today, in D-2010-049. It discusses 38 awards-fee ratings by the Corps of Engineers, and it's a real easy table to remember. Not a single one stood up; 38 out of 38 seemed to have wrongly given out award fees totaling \$20.6 million.

I found buried in the spread sheet—I'm not criticizing, I'm just saying where I found it—is that the Corps of Engineers just brushed your recommendations off. Are you going to hold their feet to the fire or are you just going to say, "OK, you know, Army Corps, you know." They treated your recommendations like they brushed off criticism of the New Orleans levees before Hurricane Katrina.

UGONE:

Well, in our follow up, when it says "open" recommendation, some of those open recommendations could be that we haven't followed up or they're in the middle of mediation, which we means we do not agree with management.

TIEFER:

Who mediates?

UGONE:

Ultimately, the mediation official is the deputy secretary of defense for the Department of Defense. That is the mediation process within DoD. But I would like to just add, we are going to follow up on the awards-fee issue because it's a problematic issue that we see cropping up.

TIEFER:

OK. Let me go on to the second one, or someone will cut my time off, just short.

An even better one because it's at the center of our interests is transition planning for the LOGCAP IV contract, and it mentions such interesting things for us as that, I'm going to quote you. You have a finding that despite spending \$31 billion on LOGCAP III work—that's KBR's monopoly contract, the one that was in effect—the LOGCAP procuring contracting officer—I think that's Jeff Parsons; we've had him as a witness—did not identify goods and services that could be acquired under firm-fixed-price task orders, which would have, you had said, reduced costs to the Army.

And it said the PCO, that's Jeff Parsons, focused more on the immediate need to award contracts to the LOGCAP IV contractors than implement cost-control methods.

Now, I want to ask you. You accepted his comments. That is, they're closed. I don't know whether anybody else would. But he did say the executive director stated that changing operations in Iraq and Afghanistan dictate the continued use of cost-type contracts.

Well, now that he's awarded all his immediate LOGCAP IV contracts in Iraq, Afghanistan, and Kuwait, might you now follow up and see whether he's in there hard at work taking stuff for fixed fees?

UGONE:

Yes, we plan to do that with LOGCAP IV in Afghanistan, with our forward-deployed auditors.

TIEFER:

That's a plus because that's probably going to be the biggest one. How do you feel about Kuwait? I went to Kuwait and the DCAA officials sort of laughed at me when I said things would get better.

UGONE:

I think we're taking a look at one of the subcontractors related to LOGCAP. I'll have to get back to you on that, in Kuwait, but I'll need to get back to you on the details on that.

TIEFER:

Thank you.

SHAYS:

Thank you.

Mr. Henke, do you have some questions that [we] can all jump in again on?

HENKE:

I damaged some government property there.

Mr. Gambatesa, what regional office oversees your work in Afghanistan and Iraq?

GAMBATESA:

Well currently, our office in Manila oversees it, as I think I testified here, but we're in the process of staffing a full office there by this summer.

HENKE:

There? Where?

GAMBATESA:

In Kabul, I'm sorry.

HENKE:

In Kabul. OK.

Mr. Geisel, your office that oversees I think is in Jordan, is that right?

GEISEL:

We have different offices for investigations, as opposed to audits We have . . .

HENKE:

Where is MERO headquartered?

GEISEL:

MERO is going to be headquartered in Cairo. It is being moved from Amman to Cairo.

HENKE:

When did IG establish MERO, Middle East Regional Office?

GEISEL:

January, 2008.

HENKE:

2008? OK.

I've got a question for you, Mr. Geisel. Shifting subjects to the Worldwide Protective Services contract.

ZAKHEIM:

On that subject, then, quickly.

HENKE:

Sure.

ZAKHEIM:

I mean, after all, we interrupt you every time.

HENKE:

Happy to yield.

ZAKHEIM:

Just very quickly. Given that we're in Afghanistan and Iraq, why did you move the office in the wrong direction? I mean, we've got a whole bunch of allies in the Southern Gulf. You've got offices there. You'd be a lot closer. Cairo is a long way off.

GEISEL:

I'm so glad you asked that. The reason is that that's the only place (A), where there was room, at least that's what the department told us. And (B), Cairo is very, very good because you can get visas to almost everywhere in Cairo, and they've got air connections to almost everywhere from Cairo. But my first choice was, indeed, to go the Gulf with, of course, people on-site in Kabul and in Baghdad, but there was no room because the whole U.S. government is rushing off to the Gulf and our buildings are stuffed to the gills.

SHAYS:

Would the gentleman just yield? I'm sorry.

HENKE:

I'm happy to yield.

SHAYS:

When you say the only place available, "at least that is what the department told us," I wonder if the special IG's would accept that? Or whether because you oversee this department, you acquiesce to what the department says? I don't mean to sound rude, but it strikes me that somehow that's an unacceptable thing that they told you and you accepted it.

GEISEL:

Not really because you can take the work that we do, so much of the work, that we go where we need to be. Most of the time, we're sending individuals in to . . .

SHAYS:

Well, the bottom line is you disagree with my comment. I'm just expressing to you the bias that I have. I think it's unacceptable for you to accept their saying you can't be in theater.

GEISEL:

They didn't say we couldn't be in theater.

SHAYS:

You can't locate in theater.

GEISEL:

We are in theater. We have people in Kabul. We have people in Baghdad. We have people in Amman. We have people in Cairo. We have them where they think they ought to be. Where we don't have them is in the Gulf countries, but once you're outside of Kabul, once you're outside of Baghdad, we'll go where we can best be accommodated and where we can do our work the best.

SHAYS:

I'm sorry, the gentleman . . .

ZAKHEIM:

Now, how many people are we talking about here that we couldn't find room for when we're building like crazy in Abu Dhabi. We're building like crazy in Qatar. We've got loads of facilities in Kuwait. How many people . . .

GEISEL:

Well, why would I want to be in Kuwait instead of Amman or Cairo? Amman is just as . . .

ZAKHEIM:

I don't know why you moved out of Amman so I don't know how to answer that one. Cairo I think I could answer.

GEISEL:

Basically, Amman, our criminal investigators are going to Amman and our auditors are going to Cairo and it's just a matter that the buildings are absolutely stuffed full.

ZAKHEIM:

And I come back at you, Mr. Geisel, with all due respect, we are building buildings like crazy all over the Southern Gulf.

GEISEL:

Tell me where. Tell me where we could go? Because I'm telling you, and I have the figures, I'm telling you that there was no room in Abu Dhabi, where I would have liked to have . . .

ZAKHEIM:

OK. Could you give us (A), could you give us the figures? And (B), could you tell us how many people we're talking about?

GEISEL:

Absolutely.

SHAYS:

OK. Let me say thank you.

You have such time as you may consume, and I'm going to restrain myself and everyone else from interrupting you.

HENKE:

Mr. Chairman, let's order dinner. Right?

(LAUGHTER)

Mr. Geisel, you make two very clear points, two issues, two big thematic issues in your testimony. First, you've got to have a well-written, clear contract. You've got to think about what you want. You've got to write it down and communicate it clearly.

And Ms. Ugone, that's your number-one requirements where it's all red. Right?

Secondly, Mr. Geisel, you said you have to have—shocking—you have to have people in the field who oversee it and manage the programs, not just the activities, but the program itself. So you've got to write it down and you've got to check it is what it boils down to. It really couldn't be any simpler than that.

My question to you, sir, is on this: you've done a series of reports evaluating the Worldwide Protective Services contract, the WPPS contract, security guards, largely in response to incidents from late 2007. I've read a number of the reports. My general sense from reading them is that you have a number of performance findings in the kind of run-of-the-mill nature. The vehicles had aluminum wheels, not steel rims on their trucks. The dogs weren't perfectly trained. They didn't have a number of things that were fairly easily fixable. That's on the performance of the contractor issue.

The second is the government oversight of the contractor. My sense of it is that's where you find a lot of the more systemic, recurring, hard-to-root-out challenges. Is that your sense of it as well?

GEISEL:

It depends on which contract you're speaking about. But of course, I agree with you that it's more important to supervise than to solve the smaller issues. And we haven't found as much fault lately, I mean very lately, with Worldwide Protective Services as we had.

But on the Afghan police training, where we did the joint audit with AID, yes, that was key. There was no one out there doing any of the checking.

HENKE:

Right. The point I wanted to make was that or is that for a contract to succeed, it requires both a contractor to perform, and then the government to do its part. And Ms. Ugone, you alluded to this. All too often it's just an abdication.

I'm going to contract for it, and then hope. I'm going to send it out there, put a contract, and forget about it.

The burden is not just on the contractor, go do a good job; it's on the government to also check it, ensure it, pay it right, evaluate it, debar it, whatever you need to do.

Can you comment on that?

UGONE:

In fact, when you take a look at the oversight and surveillance area, the contract administration area, we had 155 recommendations. The most recommendations was in the contract-administration area, where you do need to have adequate oversight. And that involves not only

the CORs, the contracting officer reps, but also from the standpoint of involving DCAA as well, and also DCMA on the quality-inspection side of the house.

But it all needs to be planned in the front, what you expect as a performance measure, and what kind of quality-surveillance plan you plan to have in the very beginning.

HENKE:

Finally, are you aware of the recent IG report on DCMA's work in Southwest Asia?

UGONE:

The DCMA workforce-issue report? Yes. That report identified where there really hasn't been a clear definition of what is needed as far as number of people from DCMA to support Southwest Asia operations.

HENKE:

Right. And also, the training of those people.

UGONE:

Yes. It's not only the number, but it's the training of qualified personnel.

HENKE:

OK. Thank you.

SHAYS:

Ms. Schinasi?

SCHINASI:

Just a quick question for Mr. Geisel and Ms. Ugone: there are two major programs that are about to switch agencies, the Afghan National Security Forces contract, which is going to go from State to DoD and the Iraqi National Police, which is going to go the other way from DoD to State.

Are you all ready for that switch? And can you tell me how?

UGONE:

With respect to the recent report that we jointly issued on INL, the International Narcotics Law Enforcement, SIDPOL contract, we plan to follow that up with State to see what because apparently, the new contract that's anticipated might take a while for DoD to compete. So, therefore, we are going to follow up to see how adjustments have been made to make sure that the requirements can be met by that State contract.

GEISEL:

I feel, in the case of—that's the contract in Afghanistan—I think if the department accepts our recommendations and follows them out, and they testified that they will, that the contract will be much better monitored.

I still have a problem, though, with the contract itself, which was not well done. And that's where I look forward to the current legal issues being resolved.

SCHINASI:

OK. And how about transitioning from SIGIR, which, as it now stands, is going to go out of business shortly here, how much of a lead time do you need to be able to pick up on that work, so we don't have any gaps in coverage?

GEISEL:

SIGIR in Iraq? I think SIGIR has already started transitioning to us, although I'm not well briefed on it. I think we have the resources.

Of course, remember that most of what's happening with SIGIR in Iraq is DoD and USAID. There's not that much of State involved.

SCHINASI:

So, Mr. Gambatesa and then I'll ask . . .

GAMBATESA:

Well, we work, from the investigative standpoint we work with them on most of these investigations, so there's really no issue there. And from an audit standpoint, we have an audit plan that we'll go forward with the eight or nine more audits that we're doing. So, there's really not really a hand-off, as such.

SCHINASI:

OK. And I'm just going to end by referring back to the chart in the DoDIG report looking at key aspects of the contracting process. And we've talked a lot about the red here and where it is.

But if you were doing this report for acquisition as a whole in the department, would you expect this to look much different?

UGONE:

No, I would not. I would focus, again, on the key phases and the key elements of requirements  
...

SCHINASI:

Right, OK. And if you were doing it 10 years ago for the department, would you expect it to look much different?

UGONE:

No. It would look the same.

SCHINASI:

Yes. And so, you know, the fact that we don't have enough trained CORs, I'm not sure more training is really enough to get it done. It's certainly sufficient—necessary, but not sufficient.

So, underlying causes of why this system continues to stay broken?

UGONE:

I think we don't take the lessons learned. And if you take a look at the history of contracting, which is an academic document written by a professor that I reference in my testimony, we've

been learning these lessons over and over again since the Revolutionary War. And we haven't gotten it right yet.

So, I think that's an area, if we could institutionalize it through having us as part of the operational planning, have us part of it. When the O plans, or operational plans, are executed, we should be part of that pre-planning and deployment forward.

SCHINASI:

Mr. Geisel, do you want to comment?

GEISEL:

I agree with every word my colleague said. Nothing has changed at all. And she's got the solutions, if they can ever be implemented.

SCHINASI:

Mr. Gambatesa?

GAMBATESA:

No, I agree. I think, as I said earlier, we find the same thing in other parts of the world where we see the same problem with data quality.

Now—and I don't want to get off into Haiti, but we are trying to get ahead of the game in Haiti. And . . .

SCHINASI:

We'll have to leave that for another commission.

But let me, one of our panelists on the first panel used a phrase that the Department of Defense uses, which I'd heard but forgotten. In describing one of their programs, they talk about money as a weapon system. The idea being that—this was with respect to the CERP program—you can get a lot of leverage out of money.

And I would just submit that perhaps, if we can get them to think about saving money as a weapon system, you know, that maybe that would also result in leverage that we could get a lot more for the dollars that we're spending in Iraq and Afghanistan.

So, thank you.

SHAYS:

Thank you very much.

When I joined this commission, it wasn't a surprise, but very satisfying to be part of a commission where there was really no partisanship. I'd have a hard time identifying a Republican or Democrat without having to really think about it on this commission.

The other not surprising but very satisfying aspect of joining was to have confirmed the good work of all our IGs. So, notwithstanding any question or disagreement I may have about a view you have, the work you do is outstanding.

And the other part is that, notwithstanding whatever disagreement I may have about the value of the special IGs and their continuing, it has been really satisfying to see how well you all have tried to work with each other. So I know it involves a lot of work and effort, and sometimes not doing something you may want to do, or whatever. But unless I'm being fooled, the way you all work with each other to maximize your effect is to be commended. And I thank you for that.

And I just thank you, as well, for your public service. What I said to the previous panel applies to you. You all are taking on work that you could get paid more somewhere else, and you have long hours, and you have to sometimes come before a public panel and have your views questioned. And so, I thank you for your willingness to participate in that.

We would end by just saying, is there any question that we should have asked you that you would have liked us to have asked? Anything you want to put on the record before I hit the gavel?

Well, I appreciate that, because I had a bet with my colleague that we wouldn't finish by 2:30, and it is 2:24. Thank you all very much.