U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 18, 2007

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

Dear Mr. Chairman:

Please find enclosed responses to questions arising from the March 20, 2007, appearance before the Committee of Deputy Assistant Attorney General Barry Sabin at a hearing entitled "Combating War Profiteering: Are We Doing Enough to Investigate and Prosecute Contracting Fraud and Abuse in Iraq?" We hope that this information is of assistance to the Committee. Please do not hesitate to call upon us if we may be of additional assistance.

The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

Richard A. Hertling

Richard A. Hertling
Principal Deputy Assistant Attorney General

Enclosure

cc: The Honorable Arlen Specter
Ranking Minority Member

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

<u>Investigations of Fraud in Iraq</u>

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

(a) What were the sentences received by the defendants in these cases to date, and what was the average sentence received for those who have been sentenced?

(b) Which defendants in these cases were given cooperation agreements with the government, and, in how many of those cases, did the government move for downward departures on behalf of those defendants at the time of sentencing?

(c) Did DoJ attorneys enter into any agreements allowing defendants to pay restitution that was less than the full amount of the fraud, or provide any other financial benefit to the defendant?

If yes, please identify the cases, the reduction in restitution or financial benefit?

(d) How many of these cases are continuing, and do you expect to bring further charges in any of these cases?

(e) How many of these cases actually involved contracting fraud related to military or reconstruction activities in Iraq and Afghanistan?

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

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

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

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

1(a) Bloom was sentenced to 46 months incarceration, two years supervised release, and ordered to pay $3.6 million in restitution and forfeit $3.6 million for his role in a bribery and money laundering conspiracy arising out of Bloom's payment of bribes to Robert Stein, Bruce Hopfengardner and others in Al Hillah, Iraq.

1(b) Bloom entered into a plea agreement with the government that included a provision for the defendant to provide cooperation to the United States. At the time of sentencing, the government recommended a downward departure from the applicable guidelines range based upon the defendant's cooperation.

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

1(c) DoJ did not enter into any agreements allowing the defendant to pay restitution that was less than the full amount of the fraud, or provide any other financial benefit to the defendant.

1(d) As described in section 1(b), five additional defendants were charged for their conduct arising out of the same investigation. With respect to your question about future charges, we cannot comment about ongoing criminal investigations in instances where no charges have been brought.

1(e) *Bloom* involved contracting fraud in Iraq.

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

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

1(a) Stein was sentenced to 108 months incarceration, three years supervised release, and ordered to pay $3.6 million in restitution and forfeit $3.6 million.

1(b) Stein entered into a plea agreement with the government that included a provision for cooperation with the United States. At the time of sentencing, the government recommended a downward departure from the applicable guidelines range based upon the defendant's cooperation.

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

1(c) DoJ did not enter into any agreements allowing the defendant to pay restitution that was less than the full amount of the fraud, or provide any other financial benefit to the defendant.

1(d) As described in section 1(b), five additional defendants were charged for their conduct arising out of the same investigation. With respect to your question about future charges, we cannot comment about ongoing criminal investigations in instances where no charges have been brought.

1(e) *Stein* involved contracting fraud in Iraq.

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

1(a) Pappen was sentenced to two years incarceration, one year supervised release and ordered to pay a $28,900 fine for accepting illegal gratuities while working as a Real Estate Specialist for the U.S. Army in Kuwait.

1(b) Pappen's plea agreement did not include a provision for cooperation with law enforcement authorities.

1(c) DoJ did not enter into any agreements allowing the defendant to pay restitution that was less than the full amount of the fraud, or provide any other financial benefit to the defendant.

1(d) We cannot comment about ongoing criminal investigations where no charges have been brought.

1(e) *Pappen* involved contracting fraud in Kuwait.

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

1(a) Murphy was sentenced to one year probation and ordered to pay a $1,500 fine for accepting illegal compensation from an Iraqi contracting firm.

1(b) Murphy's plea agreement did not include a provision for cooperation with law enforcement authorities.

1(c) DoJ did not enter into any agreements allowing the defendant to pay restitution that was less than the full amount of the fraud, or provide any other financial benefit to the defendant.

1(d) We cannot comment about ongoing criminal investigations in instances where no charges have been brought.

1(e) *Murphy* involved contracting fraud in Iraq.

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

1(a) Hopfengardner has pleaded guilty for his role in a bribery and money laundering conspiracy in Al Hillah-Iraq. Hopfengardner is scheduled to be sentenced on June 25, 2007, in the District of Columbia.

1(b) Hopfengardner entered into a plea agreement with the government that included a provision for cooperation with the United States. Until sentencing, any relevant cooperation will remain confidential.

1(c) DoJ did not enter into any agreements allowing the defendant to pay restitution that was less than the full amount of the fraud, or provide any other financial benefit to the defendant.

1(d) We cannot comment about ongoing criminal investigations in instances where no charges have been brought.

1(e) *Hopfengardner* involved contracting fraud in Iraq.

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

The defendants in the following set of cases were charged for their conduct in a scheme to commit wire fraud in which they manipulated a Department of Defense pay-processing computer in order to award themselves over $320,000 in pay and entitlements for which they had not completed work. With the exception of Lane, all defendants have pleaded guilty and are scheduled to be sentenced on September 10, 2007. Lane was indicted for conspiracy, honest services wire fraud and obstruction of justice. He is scheduled to stand trial in California in August 2007.

United States v. Jesse Lane, Case No. 07-165 (CDCA)
United States v. Luis Lopez, Case no. 06-723 (CDCA)
United States v. Derryl Holier, Case No. 06-721 (CDCA)
United States v. Jennifer Anjakos, Case No. 06-724 (CDCA)
United States v. Carlos Chavez, Case No. 06-722 (CDCA)

1(a) None of the defendants has yet been sentenced. Other than Lane, the defendants are scheduled to be sentenced on September 10, 2007.

1(b) The four defendants other than Lane entered into plea agreements that included provisions for cooperation with the government. Until sentencing, any relevant cooperation will remain confidential.

1(c) DoJ did not enter into any agreements allowing the defendants to pay restitution that was less than the full amount of the fraud, or provide any other financial benefit to the defendant.

1(d) As noted above, defendant Lane has been indicted, and his trial is scheduled to begin in August 2007. With respect to your question about future charges, we cannot comment about ongoing criminal investigations in instances where no charges have been brought.

1(e) These cases involved wire fraud and honest services wire fraud with conduct occurring both in the Republic of Kuwait and in the United States of America. The funds stolen by these individuals were set aside to pay those serving in support of Operation Iraqi Freedom and Operation Enduring Freedom.

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

1(a) Powell, a U.S. citizen and former KBR subcontracts administrator, was sentenced to 15 months imprisonment, three years supervised release, and ordered to pay $90,973.99 in restitution in addition to a $200 special assessment.

1(b) Powell entered into a plea agreement with the government that included a provision for cooperation with the United States. At the time of sentencing, pursuant to United States Sentencing Guidelines § 5K1.1, the government recommended a downward departure from the applicable sentencing guidelines range based upon the defendant's cooperation.

1(c) DoJ did not enter into any agreements allowing the defendant to pay restitution that was less than the full amount of the fraud, or provide any other financial benefit to the defendant.

1(d) This matter is closed. The government does not expect any further charges resulting from this investigation.

1(e) This case involved fraud and kickbacks under a LOGCAP III subcontract for construction of a warehouse in Iraq.

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

1(a) Seamans, a U.S. citizen and former KBR procurement materials and property manager, was sentenced to 12 months and one day imprisonment, three years supervised release, and ordered to pay $380,130 in restitution and a $200 special assessment.

1(b) Seamans entered into a plea agreement with the government that included a provision for cooperation with the United States. At the time of sentencing, pursuant to United States Sentencing Guidelines § 5K1.1, the government recommended a downward departure from the applicable guidelines range based upon the defendant's cooperation.

1(c) In this case, the plea agreement called for restitution beyond that supported by the criminal charges. Prior to Seamans' direct use immunity proffer, the government could only prove he had received $60,500 in kickbacks. Under the restitution statutes, this is all Seamans was liable for criminally, absent agreement.

The government learned that Seamans received a total of $438,860 in kickbacks. As part of the plea agreement, Seamans agreed to pay $380,130 in restitution.

1(d) The government cannot comment on pending investigations where no charges have been brought.

1(e) This case involved fraud/kickbacks under a LOGCAP III dining facility subcontract in Kuwait and a LOGCAP III dining facility subcontract in Iraq.

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

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

1(b) Shabbir Khan entered into a plea agreement with the government that included a provision for cooperation with the United States. At the time of sentencing, the government did not make a motion for a downward departure under United States Sentencing Guidelines § 5K1.1.

1(c) DoJ did not enter into any agreements allowing the defendant to pay restitution that was less than the full amount of the fraud, or provide any other financial benefit to the defendant.

1(d) This matter is related to the *Seamans* case. With respect to your question about future charges, the government cannot comment on pending investigations where no charges have been brought.

1(e) This case involved fraud/kickbacks under a LOGCAP III dining facility subcontract in Kuwait and a LOGCAP III dining facility subcontract in Iraq.

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

1(a) Cahill, a U.S. citizen and former management level employee with Eagle Global Logistics, was sentenced to 30 months imprisonment and two years supervised release, and ordered to pay a $10,000 fine and $100 restitution.

1(b) Cahill entered into a plea agreement with the government that included a provision for cooperation with the United States. At the time of sentencing, the government made a motion for downward departure under United States Sentencing Guidelines § 5K1.1.

1(c) DoJ did not enter into any agreements allowing the defendant to pay restitution that was less than the full amount of the fraud, or provide any other financial benefit to the defendant. The Court, however, did not order any restitution. Prior to Cahill's sentencing, his company, Eagle Global Logistics, entered into a civil settlement with DoJ that included the $1.14 million the company benefited as a result of Cahill's fraud, plus treble damages.

1(d) The government cannot comment on pending investigations where no charges have been brought.

1(e) This case involved Eagle Global inflating invoices to KBR under a LOGCAP III subcontract for aerial logistical support in Iraq. Eagle Global was charging KBR a dummy war-risk surcharge, the cost of which the government ultimately bore.

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

1(a) Peleti, a U.S. citizen and Chief Warrant Officer with the U.S. Army, has pleaded guilty to: one count of bribery, 18 U.S.C. § 201; one count of bulk cash smuggling, 31 U.S.C. § 5332; and one count of criminal forfeiture. His sentencing is scheduled for June 2007.

1(b) Peleti entered into a plea agreement with the government that included a provision for cooperation with the United States. Until sentencing, any relevant cooperation will remain confidential.

1(c) DoJ did not enter into any agreements allowing the defendant to pay restitution that was less than the full amount of the fraud, or provide any other financial benefit to the defendant.

1(d) The government cannot comment on pending investigations where no charges have been brought.

1(e) This case involved attempted fraud and bribery with respect to U.S. government contracts/subcontracts in Kuwait relating to dining facilities services. The defendant received the actual bribe but was unsuccessful in steering any government contracts towards the Iraqi contractor that paid the bribes.

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

1(a) On March 28, 2007, Mahmoud was sentenced to time served, and two years supervised release, with the first 90 days in a community correction center.

1(b) Mahmound entered into a plea agreement that included a provision for cooperation with the United States. At the time of sentencing, the government did not make a motion for a downward departure under United States Sentencing Guidelines § 5K1.1.

1(c) As part of the defendant's plea to violation of false statements, no restitution was requested. Mahmoud forfeited $29,819.59 that he had received from subcontractors in Iraq.

1(d) The government cannot comment on pending investigations where no charges have been brought.

1(e) Mahmoud's case involved false statements to investigators, but the investigation focused on contracting fraud related to reconstruction activities in Iraq.

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

1(a) Salam was sentenced on February 5, 2007, in U.S. District Court for the District of Columbia to 36 months imprisonment and two years supervised release.

1(b) Salam entered into a plea agreement with the government that included a provision for cooperation with the United States. At the time of sentencing, the government recommended a downward departure from the applicable guidelines range based upon the defendant's cooperation.

1(c) DoJ did not enter into any agreements allowing defendant to pay restitution that was less than the full amount of the fraud, or provide any other financial benefit to the defendant.

1(d) The case related to Salam is concluded, and we do not expect to bring further charges.

1(e) Salam's case involved bribery of foreign officials in connection with private transactions unrelated to Salam's employment by a U.S. defense contractor.

<u>Referrals and Declinations of Contracting Fraud in Iraq</u>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Investigative Resources in Iraq

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

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

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

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

Response: The extensive use of contractors in Iraq, Afghanistan, and Kuwait has created an opportunity for fraud and corruption on a larger scale than existed during previous military operations. Consequently, the demands on United States Government investigative resources have substantially increased. The FBI has made combating corruption and fraud the number one priority of its Criminal Investigative Division and has received some funding for investigative activities in Iraq, Afghanistan, Kuwait and the United States. Having personnel "in theater" is a high priority because each violation uncovered outside the United States requires many more hours of investigation within the United States to successfully prosecute the case. We will continue to use our resources to effectively investigate and prosecute these matters and encourage Congress to fully fund the President's budget for FY 2008.

Views on War Profiteering Prevention Act of 2007

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

a) Does DoJ support this legislation? Please explain.

Response: "As you are aware, the Department transmitted out views to the Committee on S. 119 by way of a letter to Chairman Leahy, dated March 28, 2007." While the Department welcomes the enactment of new tools to combat fraud committed by military contractors, which is a priority area enforcement area for the Department, we are concerned that enactment of S. 119 may have a negative impact upon existing criminal statutes. We welcome the opportunity to work with Committee staff to address these concerns. Currently, the Department has a number of powerful statutes that are not limited to specific international undertakings by the United States, but which have universal application to all fraudulent schemes undertaken against the United States, including those schemes associated with war profiteering. The Department is concerned the enactment of criminal statutes (such as S. 119) that are targeted to fraud occurring during particular events may have the unintended consequence of eroding the application of our time-tested general fraud statutes to specific events, setting the precedent that fraud in each new situation requires enactment of its own new fraud statute before effective prosecution can be undertaken.

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

- To the extent that establishing "venue" over criminal targets in Iraq and other overseas locations could be a problem in future criminal matters, a new provision (similar to the one contained in S. 119) could be added to the general fraud statutes that places venue "in any district where any party to the contract or provider of goods or services is located."

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

- United States Code Title 18, Section 1956 (money laundering) could be amended by listing certain general fraud statutes (*e.g.*, 18 U.S.C. Section 1031 and 41 U.S.C. Section 51, *et. seq.*) as "specified unlawful conduct."

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

- The general fraud statutes could be amended by including an explicit provision for extraterritorial jurisdiction.

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

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

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

- In Section (a)(1), the meaning of "within the jurisdiction of the United States" is unclear. We recommend adopting language from United States Code Title 18, Section 1031(a), which is more specific in that it links the illicit conduct to a prime/sub "contract with the United States." For example, we would want to clarify the extent to which the proposed legislative language is distinct from terms like "special and maritime jurisdiction" articulated in United States Code Title 18, Section 7(9).

- Section (a)(1) imposes an additional element of proof which would complicate our prosecutions. The proposed provision includes the term "willfully" even though other statutes in Title 18 such as bank fraud, wire fraud, mail fraud, and major fraud against the United States, among others, do not impose a "willful" requirement. We are concerned about including an additional and unnecessary element of proof. Similarly, the use of the term "specific intent," which is not found in statutes such as the securities fraud provision of United States Code Title 18, Section 1348, seems to create a higher burden of proof for the government than would be necessary in order to effectively address this type of criminal conduct.

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

- Paragraph (a)(1)(B)(i) appears to be unnecessarily vague. The provision makes it a crime "to falsify, conceal, or cover up by any trick or scheme a material fact." However, it is unclear to what the material fact must pertain. Perhaps (a)(1) can be read to limit this to a material fact "in any matter involving a contract or the provision of goods. . ." but this does not appear to solve the vagueness problem with respect to paragraph (a)(1)(B)(i).

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

- The Committee may consider including in S. 119 a provision for conspiracy or attempt.

- We recommend that United States Code Title 18, Section 2516 (c) (authorization for wire interception) be amended to include S. 119 as a predicate for authorization of wire interception.

No Criminal Sanctions for KBR

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

(a) How many criminal cases brought to date have involved an employee of KBR, and what is the criminal conduct alleged or proven in those cases?

(b) How many KBR employees were offered cooperation agreements or other leniency by DoJ in those cases, and what, if any, reductions in sentences or other lenience did the KBR employees receive as a result?

(c) What, if any, criminal fines or penalties has KBR paid as a result of this criminal conduct?

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

(d) What, if any, restitution has KBR made in these cases? Please provide any documents reflecting these payments.

(e) What, if any, oral or written agreements has DoJ entered into with KBR or its representatives related to these cases or the conduct of their employees in these cases?

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

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

6(a) This case involves one employee (now former) from KBR (Mazon) and one resident of Kuwait (Hijazi). The indictment charges both defendants with four counts of major fraud against the United States, 18 U.S.C. § 1031(a), and six counts of wire fraud, 18 U.S.C. § 1343. The indictment alleges the defendants inflated by approximately $4.0 million a subcontract Mazon awarded to Hijazi's company for fuel tankers under the LOGCAP III prime contract. The indictment further alleges that, following Mazon's employment with KBR, Mazon received a $1 million check from Hijazi as an award for Mazon's favorable treatment of Hijazi's company.

6(b) N/A

6c) KBR has not paid any criminal fines or penalties as a result of this alleged criminal conduct because KBR has neither been charged nor convicted criminally for the alleged criminal conduct of its employee.

6(d) In January 2004, KBR paid $6.3 million to the Army Field Support Command relating to Mazon's alleged illicit conduct.

6(e) At this time, the only agreement that the LOGCAP Working Group has entered into with KBR relates to its production of documents to the government.

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

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

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

6(b) Powell entered into a plea agreement with the government that included a provision for cooperation with the United States. At the time of sentencing, pursuant to United States Sentencing Guidelines § 5K1.1, the government recommended a downward departure from the applicable guidelines range based upon the defendant's cooperation. Powell's applicable Sentencing Guideline Range was 24-30. The government recommended a sentence of 21 months.

6(c) There are no criminal fines or penalties against KBR because KBR has not been criminally charged.

6(d) Unknown.

6(e) At this time, the only agreement that the LOGCAP Working Group has entered into with KBR relates to its production of documents to the government.

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

6(a) Seamans, a U.S. citizen and former KBR procurement materials and property manager was charged in a two-count criminal information with wire fraud, 18 U.S.C. § 1343, and money laundering conspiracy, 18 U.S.C. § 1956(h). The charges arose out of a kickback agreement Seamans entered into with a manager of a Saudi Arabian company in relation to a LOGCAP III dining facility subcontract at Camp Arifjan, Kuwait. As stated in his plea agreement, which is a public document, the government learned from Seamans' direct use immunity proffer statement that the Saudi Arabian company paid Seamans a total of $123,895 in kickbacks in relation to the Camp Arifjan DFAC subcontract and an DFAC subcontract at the Royal Palace in Iraq. Also pursuant to the proffer, the government learned that Seamans received $305,000 in kickbacks from a Kuwaiti company.[2]

6(b) Seamans entered into a plea agreement with the government that included a provision for cooperation with the United States. At the time of sentencing, the government recommended a downward departure from the applicable guidelines range based upon the defendant's cooperation. Seamans' sentencing range was 24-30 months prior to the motion for departure. The government recommended a sentence of 16 months incarceration. The Court sentenced the defendant to 12 months and one day incarceration.

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

6(c) KBR has not paid any criminal penalties or fines in connection with this matter because KBR has not been criminally charged.

6(d) Unknown.

6(e) At this time, the only agreement that the Logcap Working Group has entered into with KBR relates to its production of documents to the government.

False Claims Act Cases

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

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

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

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

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

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

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

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

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

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

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

National Procurement Fraud Task Force

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

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

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

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

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

Response: The National Procurement Fraud Task Force (NPFTF) is led by the Deputy Attorney General and the Assistant Attorney General for the Criminal Division. Steve A. Linick, a Deputy Chief in the Fraud Section, has been named as the Director of the Task Force. Brian Miller, the Inspector General of the General Services Administration, is the Vice-Chair of the Task Force. The Task Force is run out of Washington, D.C.

Although there are no attorneys and agents exclusively dedicated full-time to the Task Force, there are many agents and attorneys currently working Task Force cases and working to implement the Task Force's goals and objectives. The prosecutorial resources of the Criminal, Civil, Tax, and Antitrust Divisions of the DoJ have been utilized in this initiative to ensure competing resource needs are balanced and meritorious cases are identified, investigated, and prosecuted effectively in appropriate venues. Additionally, investigative resources have been provided by the FBI and Offices of Inspectors General participating in the Task Force. The Task Force includes; the Inspectors General from the following agencies the Department of Justice, the Department of Defense; the General Services Administration; the Department of Homeland Security; the Department of the Treasury; the Small Business Administration; the National Aeronautics and Space Administration; the Central Intelligence Agency; the National Reconnaissance Office; the Department of State, the Department of the Interior' the Department of Energy; the National Science Foundation; the Department of Veterans Affairs; the Social Security Administration; the U.S. Postal Inspection Service, the Office of the Director of National Intelligence; and the Department of Agriculture.

To accomplish its objectives the Task Force has created working committees to address particular issues relating to procurement fraud. Each committee is chaired by a high-level member of the Inspector General community or the FBI. The International/Iraq Committee, which focuses on issues relating to the wars in Iraq and Afghanistan, is chaired by FBI Assistant Director CID Chip Burrus. This committee oversees the ICCTF, which, as described above in answer to question 8(a), is dedicated to combating fraud and corruption relating to the expenditure of U.S. Government funds overseas, and focusing primarily on Iraq, Afghanistan, and Kuwait.

The NPFTF has also formed numerous regional working groups to ensure that the Task Force encourages the investigation and prosecution of procurement fraud nationwide. The regional working groups are centered in areas of significant procurement activity and consist of federal agents and attorneys from those regions. To date, regional working groups have been formed in 14 districts or regions across the country, including in the Eastern District of Pennsylvania, the Central District of California, the Southern District of Florida, and the Eastern

District of New York. The Director of the Task Force coordinates the efforts of these regional working groups.

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

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

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

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

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

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

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

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

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

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

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

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

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

> Response: "As you are aware the Department transmitted our views to the Committee on S. 119 by way of a letter to Chairman Leahy, dated March 28, 2007." While the Department welcomes the enactment of new tools to combat fraud committed by military contractors, which is a priority area enforcement area for the Department, we are concerned that enactment of S. 119 may have a negative impact upon existing criminal statutes. We welcome the opportunity to work with Committee staff to address these concerns. Currently, the Department has a number of powerful statutes that are not limited to specific international undertakings by the United States, but which have universal application to all fraudulent schemes undertaken against the United States, including those schemes associated with war profiteering. The Department is concerned the enactment of criminal statutes (such as S. 119) that are targeted to fraud occurring during particular events, may have the unintended consequence of eroding the application of our time-tested general fraud statutes to specific events, setting the precedent that fraud in each new situation requires enactment of its a new fraud statute before effective prosecution can be undertaken.
>
> The Department has had great success in prosecuting contractor fraud under United States Code Title 31, § 5332 (bulk cash smuggling), Title 41, Section 51 *et. seq*. (the Anti-Kickback Act), and Title 18, §§ 1031 (major fraud against the United States), 1001 (false statements made in any matter within the jurisdiction of the United States), 1956 and 1957 (money laundering), 1341 (mail fraud) and 1343 (wire fraud), among others (hereinafter the "general fraud statutes"). To the extent that problems have surfaced in applying these statutes or others to the types

of criminal procurement fraud associated with war profiteering, the following amendments to the general fraud statutes may provide options for eliminating some of those obstacles.

- To the extent that establishing "venue" over criminal targets in Iraq and other overseas locations could be a problem in future criminal matters, a new provision (similar to the one contained in S. 119) could be added to the general fraud statutes that places venue "in any district where any party to the contract or provider of goods or services is located."

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

- United States Code Title 18, Section 1956 (money laundering) could be amended by listing certain general fraud statutes (*e.g.*, 18 U.S.C. §§ 1031 and 41 U.S.C. § 51, *et. seq.*) as "specified unlawful conduct."

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

- The general fraud statutes could be amended by including an explicit provision for extraterritorial jurisdiction.

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

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

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

- In Section (a)(1), the meaning of "within the jurisdiction of the United States" is unclear. We recommend adopting language from United States Code Title 18, Section 1031 (a), which is more specific in that it links the illicit conduct to a prime/sub "contract with the United States." For example, we would want to clarify the extent to which the proposed legislative language is distinct from terms like "special and maritime jurisdiction" articulated in United States Code Title 18, Section 7(9).

- Section (a)(1) imposes an additional element of proof which would complicate our prosecutions. The proposed provision includes the term "willfully" even though other statutes in Title 18 such as bank fraud, wire fraud, mail fraud, and major fraud against the United States, among others, do not impose a "willful" requirement. We are concerned about including an additional and unnecessary element of proof. Similarly, the use of the term "specific intent," which is not found in statutes such as the securities fraud provision of United States Code Title 18, Section 1348, seems to create a higher burden of proof for the government than would be necessary in order to effectively address this type of criminal conduct.

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

- Paragraph (a)(1)(B)(i) appears to be unnecessarily vague. The provision makes it a crime "to falsify, conceal, or cover up by any trick or scheme a material fact." Yet, it is unclear to what the material fact must pertain. Perhaps (a)(1) can be read to limit this to a material fact "in any matter involving a contract or the provision of goods. . ." but this does not appear to solve the vagueness problem with respect to paragraph (a)(1)(B)(i).

- Section (b) provides for "extraterritorial Federal jurisdiction." Although the Department is not necessarily opposed to this provision, the Department is concerned that such a provision might have the unintended consequence of undermining the Department's efforts in applying extraterritorially the general statutes, which do not contain such a provision, but which Circuit Courts have held could be extraterritorially applied notwithstanding the absence of such a provision. See *United States v. Kim*, 246 F.3d 186 (2d Cir. 2001) (holding wire fraud statute could be extraterritorially applied).

- The Committee may consider including in S. 119 a provision for conspiracy or attempt.

- We recommend that United States Code Title 18, Section 2516 (c) (authorization for wire interception) be amended to include S. 119 as a predicate for authorization of wire interception.

3. This hearing has shown several documented instances of fraud. Yet, CBS News has noted that "So far a few individuals have been charged, most from a single case, and a few million dollars has been paid back. After 3 1/2 years of war, not a single criminal case has been filed against any large corporation doing work in Iraq."

a. Is this criticism correct?

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

The Department of Justice has established a unified and coordinated approach to combat procurement fraud and has devoted a panoply of resources and expertise to this important mission. The Criminal Division's Fraud Section, Public Integrity Section, Asset Forfeiture and Money Laundering Section, and Office of International Affairs are each involved in the fight against procurement fraud and each contributes its resources and unique expertise. The Fraud Section, which has well-established relationships with many Inspectors General, particularly the Department of Defense Inspector General, and has prosecuted numerous procurement fraud cases in the past, leads the effort to combat fraud. The Public Integrity Section also has long-standing relationships with the Inspector General community and participates in investigations that involve corruption by government or military officials, as many procurement fraud cases do. The Asset Forfeiture and Money Laundering Section seeks to recover taxpayer dollars stolen through procurement fraud by assisting in the swift and comprehensive use of seizure warrants and forfeiture remedies, while the Office of International Affairs assists the Division and the U.S. Attorneys' Offices in securing evidence from foreign governments and in extraditing defendants.

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

The criminal prosecutors are not alone in their efforts. Department of Justice attorneys in the Commercial Litigation Branch of the Civil Division enforce the False Claims Act, other federal statutes, and common law remedies to address all types of procurement fraud, including overcharging, defective pricing, quality deficiencies and product substitution, and bribery and corruption statutes. These actions often result in the recovery of significant funds.

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

- On March 9, 2006, Philip Bloom, a U.S. citizen who resided in Romania and Iraq, pleaded guilty to conspiracy, bribery, and money laundering in connection with a scheme to defraud the Coalition Provisional Authority (CPA). Bloom admitted that from December 2003 through December 2005, he along with Robert Stein and numerous public officials, including several high-ranking U.S. Army officers, conspired to rig the bids on federally funded contracts being awarded by the Coalition Provisional Authority - South Central Region (CPA-SC) so that all of the contracts were awarded to Bloom. The total value of the contracts awarded to Bloom exceeds $8.6 million. Bloom admitted paying Stein and other public officials more than $2 million in stolen money that were the proceeds of the fraudulently awarded bids and at least $2 million in stolen money from the CPA in order to conceal the source and origin of the funds. On February 16, 2007, Bloom was sentenced to 46 months in prison and two years of supervised release, and ordered to pay $3.6 million in restitution and forfeit $3.6 million in assets.

- On February 7, 2007, U.S. Army Colonel Curtis G. Whiteford, U.S. Army Lieutenant Colonels Debra M. Harrison and Michael B. Wheeler, and civilians Michael Morris and William Driver were indicted for various crimes related to a scheme to defraud the CPA - South Central Region (CPA-SC) in al-Hillah, Iraq. Whiteford, once the second-most senior official at CPA-SC, was charged with one count of conspiracy, one count of bribery, and 11 counts of honest services wire fraud. Harrison, at one time the acting Comptroller at CPA-SC who oversaw the expenditure of CPA-SC funds for reconstruction projects, was charged with one count of conspiracy, one count of bribery, 11 counts of honest services wire fraud, four counts of interstate transport of stolen property, one count of bulk cash smuggling, four counts of money laundering, and one count of preparing a false tax form. Wheeler, an advisor for CPA projects for the reconstruction of Iraq, was charged with one count of conspiracy, one count of bribery, 11 counts of honest services wire fraud, one count of interstate transport of stolen property, and one count of bulk cash smuggling.

- On August 4, 2006, Faheem Mousa Salam, an employee of a government contractor in Iraq, pleaded guilty to a violation of the Foreign Corrupt Practices Act for offering a bribe to an Iraqi police official. Salam is a naturalized U.S. citizen employed by Titan Corporation, and had been living in Baghdad, Iraq. According to court filings, Salam offered a senior Iraqi police officer $60,000 for the official's assistance with facilitating a purchase by a police training organization of approximately 1,000 armored vests and a sophisticated map printer for approximately $1 million. On February 2, 2007, Salam was sentenced to three years in prison, two years of supervised release, and 250 hours of community service.

- On February 2, 2006, Robert Stein, Coalition Provisional Authority-South Central Region's (CPA-SC) Comptroller and Funding Officer pleaded guilty to conspiracy, bribery, money laundering, possession of machine guns, and being a felon in possession of a firearm in connection with the scheme to defraud the CPA. Stein also admitted to facilitating the purchase and possession of at least 50 weapons including machine guns, silencers, and grenade launchers with misappropriated CPA funds. On January 29, 2007, Stein was sentenced to nine years in prison and three years of supervised release, and ordered to pay $3.6 million in restitution and forfeit $3.6 million in assets.

- On November 13, 2006, four members of the California Army National Guard pleaded guilty to conspiracy charges related to their embezzlement from the U.S. Army while deployed in Iraq. The defendants, Jennifer Anjakos, Lomeli Chavez, Derryl Hollier, and Luis Lopez were members of the 223rd Finance Detachment, a unit of the California National Guard. Over $340,000 of unauthorized pay was laundered through various domestic bank accounts.

- On October 11, 2006, former civilian Department of Defense (DoD) employee Bonnie Murphy was indicted for accepting unlawful gratuities and unlawful compensation in connection with contracting activity while stationed in Iraq. Murphy pleaded guilty on November 7, 2006, to accepting unlawful supplementation of her salary.

- On November 3, 2006, Samir F. Mahmoud, a former employee of a construction company that has contracts with the U.S. Air Force in Iraq, pleaded guilty to making a false statement stemming from an investigation into possible violations of the Anti-Kickback Act. Mahmoud was interviewed by federal agents regarding allegations of illegal payments and gifts offered to company employees in exchange for promised assistance in obtaining, retaining, or altering the Air Force contracts and subcontracts associated with the reconstruction of Iraq. In his guilty plea, Mahmoud admitted that he willfully made materially false statements by denying that he provided gifts to other company employees when he had offered and provided things of value to at least one company employee.

- On October 12, 2006, former civilian DoD employee Gheevarghese Pappen pleaded guilty to accepting illegal gratuities while detailed to the U.S. Army Area Support Group, Host Nation Office at Camp Arifjan, Kuwait, which supports U.S. military operations in Iraq. Pappen was sentenced to two years in prison.

- On August 25, 2006, in the District of Columbia, Bruce D. Hopfengardner, a Lieutenant Colonel in the United States Army Reserves, pleaded guilty to conspiracy to commit wire fraud and money laundering in connection with a scheme to defraud the Coalition Provisional Authority - South Central Region (CPA-SC) in Al-Hillah, Iraq. In his guilty plea, Hopfengardner admitted that, while serving as a special advisor to the CPA-SC, he used his official position to steer contracts to Philip H. Bloom, a U.S. citizen who owned and operated several companies in Iraq and Romania in return for Bloom providing Hopfengardner with various things of value, including $144,500 in cash, more than $70,000 worth of vehicles, a $2,000 computer and a $6,000 watch. Hopfengardner and his co-conspirators laundered over $300,000 through various bank accounts in Iraq, Kuwait, Switzerland, and the United States. Finally, Hopfengardner admitted that he stole $120,000 from the CPA-SC that had been designated to be used for the reconstruction of Iraq and smuggled the stolen currency into the United States aboard commercial and military aircraft.

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

- Jeff Mazon, formerly a subcontracts manager for KBR, is charged with four counts of major fraud against the United States and six counts of wire fraud. He awaits trial, currently scheduled for September 2007.

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

- Stephen Seamans, formerly a subcontracts manager for KBR, pleaded guilty to two charges, namely major fraud against the United States and conspiracy to commit money laundering. He was sentenced on December 1, 2006, to 12 months and one day in prison, three years supervised release, $380,130 restitution, and a $200 assessment.

- Glenn Powell, formerly a subcontracts manager for KBR, pleaded guilty to an information charging him with one count of major fraud against the Unites States and one count of violation of the Anti-Kickback Act. He was sentenced on

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

- Shabbir Khan, formerly Director of Operations, Kuwait and Iraq, for KBR subcontractor Tamimi Global Co., Ltd., was indicted on multiple counts of wire fraud, witness tampering, conspiracy to commit witness tampering, conspiracy to commit money laundering, and making false statements. He pleaded guilty and was sentenced on December 1, 2006, to 51 months in prison, two years supervised release, $10,000 fine, $133,860 restitution, and a $1,400 assessment.

- Christopher Cahill, formerly the Middle East and India Vice President for Eagle Global Logistics, Inc. (EGL), pleaded guilty to one charge, namely major fraud against the United States. He was sentenced on August 30, 2006, to 30 months in prison, two years supervised release, $10,000 fine, and a $100 assessment. A civil settlement with EGL arising from the same facts resulted in a settlement of $4 million on August 6, 2006.

- Ali Hijazi, a former employee of LaNouvelle General Trading and Contracting Company, a Kuwait subcontractor of KBR, was charged in an indictment with major fraud against the United States and wire fraud. He currently remains a fugitive from justice.

- Zubair Khan, formerly Manager of Operations, Iraq, for Tamimi, was charged by criminal complaint with witness tampering, conspiracy to commit money laundering, conspiracy to commit witness tampering, obstruction of justice, and making false statements. He has yet to be arraigned in the United States and remains in Kuwait.

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

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

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

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

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

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

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

Response: As to the first question -- which government roles should be outsourced as a general matter -- see the response to question 4(a). With respect to the detainment of prisoners, there is considerable and longstanding precedent, as well as statutory authority, for the operation of civilian prisons by private contractors. *See, e.g., Statutory Authority to Contract with the Private Sector for Secure Facilities*, 16 Op. O.L.C. 75 (1992) (Bureau of Prisons has lawful authority to contract with the private sector for secure prison facilities). With respect to the detention of military prisoners, there may be circumstances, such as the limited availability of military or government personnel or resources, where it is appropriate to use private contractors for some aspects of the operation or administration of detention facilities, although ultimate supervision and control by military and/or government officers must be retained. With respect to intelligence gathering, there are numerous functions that may be appropriately performed by private individuals or contractors, as demonstrated by longstanding historical practice. In *Totten v. United States*, 92 U.S. 105 (1875), for example, the Supreme Court recognized that President Lincoln was "undoubtedly authorized" to contract with a private agent to gather intelligence behind the lines during the Civil War. As with comparable functions, appropriate contracting with private sources for intelligence gathering must include provision for adequate supervision and control by government officers. Similar considerations apply with respect to determining whether use of non-government personnel for interrogation, which is a form of intelligence-gathering, may be appropriate in particular circumstances.

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

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

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

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

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

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